

**Brunei: Building and
Enshrining an Absolute
Monarchy**

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Brunei: Building and Enshrining an Absolute Monarchy

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Abstract

Brunei Darussalam is one of the few remaining absolute monarchies in the world today. In an era that sees countries move towards democratisation, Brunei has moved towards the entrenchment of its absolute monarchy. With that in mind, the question this thesis seeks to examine is how Brunei has managed to remain an absolute monarchy in the face of global democratisation, particularly given that it was under the British sphere of influence until 1984. What are the reasons behind Brunei's exceptionalism in development and will these reasons allow Brunei to remain an absolute monarchy? To answer the central question, this research looks at constitutional developments in the light of Brunei's history, traditions, culture and society. The research undertaken to answer this question has been purely doctrinal in nature. The primary reason this approach was adopted was because the nature of Brunei's absolute monarchy has resulted in general disinclination in the country to discuss matters of local politics frankly. This has resulted in a distinct lack of authoritative research about Brunei in most fields. The contribution that this research makes to the subject is that, it is the first research that attempts to explain the existence of the constitutional anomaly that is the absolute monarchy of Brunei, through a contextual understanding of Brunei's constitutional journey. Drawing on historical, legal, political and sociological elements, this thesis concludes that the absolute monarchy of Brunei was built by the

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Abstract

restructuring of traditional governance by the British, entrenched by the manipulation of constitutional provisions by the Sultan and enshrined through the use of nation building ideology also by the Sultan. This ideology being so successfully implanted into Brunei society over the last thirty years, barring the entry of new variables, it seems likely that Brunei will remain an absolute monarchy in the years to come.

Table of Contents

	Page
Abstract	1
Table of Contents	3
Author's Declaration	5
Introduction	6
Chapter One	
1. Introduction	18
2. Constitutionalism and Waves of Democracy	19
3. Overview	33
4. Brunei and the British Government	47
5. The McArthur Report	62
Chapter Two	
1. Introduction	93
2. Supplementary Treaty 1905/1906	95
3. Legal Status	96
4. The Office of the British Resident	103
5. Reforms under the Resident	109
6. The State Council	115
7. The Discovery of Oil 1929 and its impact	124
8. The Japanese Occupation 1941- 1945	128
9. The British Military administration 1945- 1946	130
10. Conclusion	132
Chapter Three	
1. Introduction	134
2. The Factions	136
3. The Sultan's Titah (Proclamation)	147
4. The Report of an advisory committee- The Tujuh Serangkai	148
5. The Hickling Memorandum	163
6. Initial Negotiations- 1955- 1957	172
7. Missions to London: The Raeburn Memorandum (1957- 1959)	178
8. Political Situation in Brunei 1958	185
9. Brunei Constitutional Conference 1959	188
10. Conclusion	188
Chapter Four	
1. Introduction	190
2. The Proposals	192
3. Breakdown of Brunei- Malaya Relations	204
4. Growing Political Unrest	212

5. Political Parties and Public Participation	215
6. District council Elections	222
7. Rebellion of 1962	224
8. Emergency Powers	226
9. 1963- 1967: External Pressure and Abdication of SOAS III	229
10. The 1971 Amendment to the Brunei Agreement of 1959	233
11. The British- Brunei Treaty of 1979	235
12. Conclusion	237
 Chapter Five	
1. Introduction	239
2. Pre Independence: 1979 to 1984	239
3. Proclamation of Independence	241
4. Independence: The Early Years (1984 to 1994)	243
5. 1994 to 2004: The Second Decade after Independence	250
6. Constitutional Amendments 2004	253
7. Brunei Today	267
8. Other Factors	270
9. Conclusion	274
 Conclusions	276
 Bibliography	281

Author's Declaration

I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at Oxford Brookes University or any other institution.



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Rabiqah Natasha Halim Binti Mohamed Yusof

Introduction

Samuel P. Huntington describes global democratization as arriving in three waves¹. Each wave was described as a period of time in global history when democratization occurred in many countries at approximately the same time. In its simplest terms, to qualify as a wave, in this specific time period, the transitions of countries to democracies would have to outnumber the countries transitioning to authoritarian rule. These waves were often triggered by significant global events. Between the waves there was a trend for the number of democracies to drop before that number rose again with the next wave. This trend was termed a “reverse wave” by Huntington. The first wave of democracy according to Huntington began in the early 19th century and lasted up to 1922. The second wave of democracy began after the Allied victory in the Second World War in 1942 and ended in 1962. It was in this wave that the democratization of South East Asian nations began. Exceptionally, unlike all its South East Asian neighbours, particularly those that were also under the British sphere of influence, Brunei resisted democratisation and to this day stands as one of only a handful of countries that has an absolute monarch. What were the reasons that allowed such a small and

¹ Samuel P. Huntington, *The Third Wave: Democratization in the Late 20th Century*, University of Oklahoma Press (1993)

seemingly insignificant country to stand firm against such a sweeping global trend?

Standing at only 5765 square kilometers and with a population of approximately 400 000 people, the small physical size and population of Brunei belies an interesting past and it is in this past that we seek answers. First mentioned in approximately 977 A.D in Chinese records, Brunei went from being powerful in its own right at the start of Chinese records to being a vassal state of the Majapahit Empire in the 14th century. Brunei then reached its peak between the 15th to the 17th century when its power extended from Borneo to the Southern Philippines. War with the Spanish, problems with succession and piracy brought Brunei into decline after the 17th Century. It was in this state of decline that the British first became involved in Bruneian affairs in the mid 19th Century. The importance of the coming of the British to Brunei cannot be overstated for it is my contention in this thesis that the British played a pivotal part in the building of the absolute monarchy we see in Brunei today.

The Brunei monarchy can trace its lineage back to at least the 16th century when Islam became firmly a part of Bruneian heritage. The monarchy as it was then however was a far cry from the absolute monarchy we see in Brunei today, having more similarity then to a system of feudal lordships then to an absolute monarchy, as we

know it today. This was the system that the British had to contend with on their arrival. Finding it unworkable, they imposed a whole new system of governance on Brunei in the form of the Residential system that continued until Brunei achieved internal self-governance. From that point on, the Sultan slowly but surely accumulated power and support that has resulted in the absolute monarchy we are familiar with today.

Of the approximately 196 countries in the world today, Brunei is one of only seven that are considered to be absolute monarchies². What this means is that in these countries, absolute power vests in one single person. In Brunei that one person is the Sultan who is the head of the Government as well as the head of the State. Interestingly, five of the seven absolute monarchies remaining today profess Islam as its national state religion. One of the things this paper seeks to explore is if this religious belief is one of the many reasons for Brunei being an absolute monarchy. In an era when governments move towards democratization an absolute monarchy such as the one existing in Brunei is an anachronism; therefore the pertinent question is how has Brunei resisted democratization thus far? What are the reasons for Brunei's exceptionalism in this respect? Following on from that, will Brunei continue to resist

² The other six are Oman, Qatar, Saudi Arabia, Swaziland, the United Arab Emirates and the Vatican City

democratization? Do the reasons for Brunei's exceptionalism mean a continuation of this status quo?

To answer the question of how the absolute monarchy of Brunei was built and then endured, the central argument that this paper seeks to prove is that the reason for Brunei's absolute monarchy is in fact two fold. Firstly, the establishment of the residential system of government by the British funneled untrammelled power into one office i.e. that of the British resident. The transfer of these powers to the Sultan upon the achievement of internal self-government in 1959 gave rise to the absolute monarchy that we know in Brunei today. Should the establishment of the office of Resident be the only reason for the development of an absolute monarchy however, Malaysia and Singapore would also have developed along the same lines being also former British territories that employed the use of the Residential System. While it is arguable that these countries only exude a "sheen" of democracy, the systems in place in both Singapore and Malaysia are still a far cry from the absolute monarchy that exists in Brunei. What then made the difference in the case of Brunei?

This brings us to the second reason, which is that upon the achievement of self-governance; the postcolonial process of nation building saw the development of national ideologies in South East Asia. The specific national ideology propagated by the Sultan in

Brunei was that of “Melayu Islam Beraja” (hereinafter referred to as MIB) which could loosely be translated as “Malay Islamic Monarchy”. This ideology legitimised the preservation of the absolute monarchy by building a nexus between the Sultan, history, the Malay ethnic identity and Islamic values. From its inception after independence in 1984, MIB was “marketed” by the Sultan and his government as the path that would ensure Brunei’s future. Put very simply, this ideology legitimizes the Sultan in the eyes of the Brunei populace because it stresses that loyalty to the Sultan and his state is an Islamic religious obligation as well as a manner of governance prescribed by traditional Malay Culture. It cleverly makes loyalty to the Sultan a bridge between Brunei’s traditional past and the belief and fear of the general populace in the hereafter.

This thesis aims to provide a historical “roadmap” of Brunei’s past followed by a discussion of the situations and issues arising out of that past, that will exemplify how it was indeed a combination of these two reasons that “built” the absolute monarchy of Brunei and will potentially allow for its continued existence for the foreseeable future.

Overview and scope of the thesis

In order to understand the reasons that Brunei deviates not only from the world trend towards democratization but also from the norm in South East Asia, we would need to delve into Brunei's history.

Chapter One introduces the reader to the social structures prevalent in Brunei society in the mid 19th century, the traditional system of governance in Brunei and its shortcomings. Specifically we consider the powers and limitations of the role of Sultan in Brunei under this traditional system of governance. This part of the discussion begins with a look at the stratification of Brunei society and how that stratification affected the distribution of wealth and power in traditional Brunei governance. We consider the question of if the role of Sultan at this point in time was "absolute" in the same way it is today. We also discuss the circumstances under which Brunei became a British protected state and the various treaties that started the British- Brunei relationship. The chapter concludes with an in depth analysis of the MacArthur report which was highly influential in cementing Brunei's status as a protected state.

Chapter One gives us an overview of the many reasons for the start of the British involvement in Brunei from the point of view of both the Bruneians and the British. The beginning of British- Brunei relations is chosen as a start point in history because it is the first prong of my argument for Brunei's exceptionalism, i.e. that the power wielded by

the Sultan presently can be traced back to the office of the British Resident in Brunei during her time as a British protected state.

Chapter Two concerns itself with Brunei from 1906 to the start of the Second World War. It begins with a consideration of how the treaty of 1906 had changed the nature of the office of the British Resident in Brunei and looks at what the concept of being a “protected state” entails. It highlights the extensive powers of the British Resident in Brunei and the seminal reforms to government by the Resident.

Chapters One and Two together outline the process by which supreme power in Brunei came to be vested in one office i.e. that of the British Resident.

Chapter Three considers the first stirrings of nationalism in Brunei post World War Two and thoroughly analyses two reports prepared for the purposes of the promulgation of the Brunei written constitution of 1959. It offers a selective account of the various factions involved in the discussions and conferences in the lead up to the writing of the written constitution. This chapter sees the transfer of power from the British Resident to the Sultan of Brunei in 1959. By the end of the brief journey into Brunei’s constitutional history up to the achievement of internal self governance in 1959, the reader should be able to track how the absolute power in Brunei, starting in the

hands of the British resident, came to reside in the hands of the Sultan.

In Chapter Four we see how Brunei moved completely away from democratic ideals, choosing instead to entrench its monarchy. This chapter considers the immediate aftermath of the promulgation of the 1959 Constitution which included various proposals for Brunei to join what is now known as Malaysia and how public discontent with the “Malaysia issue” culminated in a rebellion in 1962. I examine how the Sultan took advantage of the consequences of the rebellion and powers afforded to him under the constitution to start to entrench an absolute monarchy in Brunei.

Taken as a whole, Chapters Three and Four enable the reader to understand, not only the transition of a large portfolio of power from the British Resident to the Sultan of Brunei but also how the Sultan took advantage of circumstances to enlarge that portfolio of power and solidify the absolute position of the monarch in Brunei.

Chapter Five focuses on Brunei from 1962 to the present day. It deals briefly with the issues that arose in the lead up to Bruneian independence in 1984 and a consideration of Brunei’s national

philosophy of MIB³. MIB, though officially promulgated on Bruneian independence from the British, is based on elements, such as the superiority of the Malay race that can be seen in Brunei from as early as 1959 if not even earlier. MIB is a national ideology that seeks to 'nation build' and provides legitimacy for the monarchical regime through fostering a national identity based on the three pronged pillars of a shared Malay culture, Islamic religion and loyalty to the Sultan⁴. Chapter five then takes the reader through the various constitutional changes between 1979 and 2004 in which the Sultan ensured his continued absolute status through constitutional amendment. The chapter concludes with postulations as to what I consider to be the primary factors present in Brunei, working in tandem with MIB, which allow the continued existence of the monarchy to this day. I very briefly consider: -

- i. the consequences of the suppression of political parties in Brunei;
- ii. the effect of constitutional favoritism in favour of the ethnic Malays in Brunei;
- iii. the role of Islam in legitimizing rule via absolute monarchy;

³ Sharon Siddique, *Brunei Darussalam 1991: The Non- Secular Nation*, Southeast Asian Affairs, Institute of Southeast Asian studies, Singapore, 1992;

⁴ G Braighlin, *Ideological Innovation Under Monarchy: Aspects of Legitimation Activity in Contemporary Brunei*, Comparative Asian Studies, VU University Press

- iv. the role of economic development in democratization and how as a small wealthy nation, Brunei does not partake in the general rule.

Brunei's exceptionalism with regards to how she is governed can be attributed to a fortuitous confluence of both unintended and manufactured circumstances. Unable to administer a country with a pre-existing set of ruling traditions, the British were forced to reorganize Brunei's government structure. It was unforeseen at the time that the British Empire would collapse and equally unimaginable that the power of the British resident would be transferred to one person such as it was in Brunei. Working concurrently with this was the fact that Brunei was in possession of a capable and wily Sultan determined to not only preserve, but also enhance his position in government.

Limitations

It was felt at the outset of the writing of this thesis that any methodology other than a theoretical approach to research would not contribute greatly to this thesis. The reason for this being that much of this work is based on examining the historical circumstances leading up to the drafting of Brunei's constitution for which there is no useful avenue for qualitative or quantitative research. It was also

felt that qualitative or quantitative research would not aid in the contextualization of the constitution in modern day Brunei due to the reluctance and fear of the general public to discuss governance in anything but an amiable light.

The biggest limitation on this thesis has been the difficulty of obtaining source material. This is mainly due to the fact that there is not very much scholarly research that deals with Brunei and particularly little that addresses Brunei's constitutional history and framework. Primary sources for this work predominantly take the form of archived material from the National Archives in Kew. In particular, the primary sources for this work, come in the form of government correspondence on, and the text of treaties signed between Brunei and the UK. These primary sources provide the backbone for this thesis in the sense that they are key to understanding the timeline of, and the relationship between, Brunei and the British Government.

Secondary sources of information mostly come from the texts of work from British historians. Though some may argue that some of these secondary sources are dated, they have been chosen specifically because it is my opinion that they provide the most comprehensive overview of Brunei in that period of Brunei history. Other secondary

sources used are mostly articles written about Brunei, although not necessarily on Brunei constitutional history. These secondary sources are predominantly used to provide context to this thesis.

It is notable that there is a distinct lack of material from Brunei itself. The reason for this absence is twofold. Firstly there is little to no access given to the Brunei National Archives and hence no way of obtaining primary sources from a Bruneian perspective. The second and perhaps more salient reason for the lack of Brunei resources is that for fear of incurring the ire of the Government, there is very little local constitutional research and discourse. There however are few notable Bruneian historians whose work has been cited in this thesis as secondary sources.

In conclusion, Brunei's continued existence as an absolute monarchy can be attributed to two things. Firstly, the necessary reorganization of Brunei's governance by the British which allowed immense power to transfer from the British Resident to the Sultan. Secondly, the use of that power by the Sultan to propagate an ideology which gave the monarchy political legitimacy in the eyes of its people.

Chapter One

1. Introduction

The coming of the British was pivotal in changing the face of Bruneian governance. The change in Brunei however produced unexpected and unique results. History has shown that in most British territories, the nascent forms of democracy left by the British at the end of their empire, by and large worked with the traditional systems in place to produce largely democratic ends. Traditional Malay governance therefore, while possibly being a contributory factor, cannot be the only reason for Brunei's unique development into an absolute monarchy. Similar traditional systems were also found in Malaysia, which is now a democratic nation¹. To establish what the various factors were in Brunei's unique development it seems pertinent not only to examine how traditional Brunei was ruled but also how that rule was changed by British involvement and the evolution of the Brunei rulers and Bruneian people in light of those changes.

¹ Sadka, Emily, *The Protected Malay States 1874- 1895*, University of Malaya Press (1968)

2. Constitutionalism and Waves of Democracy

As a starting point however, in order to understand how Brunei went against the trend we must first understand what the trend was. Samuel Huntington theorized that democratization in the world occurred in “waves”. It is with an explanation of what is meant by “waves of democracy” that this chapter begins because it concisely explains the trend towards democratization in the world in the 20th century. How did this trend towards adopting democracy manifest in South East Asia; the geographic region where Brunei is found? I briefly highlight the democratic journey and constitutional status of two South East Asian nations i.e. Singapore and Malaysia in the second wave of democratization as relevant case studies of the manifestation of this trend within this geographical region. From the brief account of Singapore and Malaysia in the 1960’s, followed by a more in depth look into Brunei in the chapters after this, we will see that despite the convergences in culture, traditions, society and historical backgrounds of Brunei, Singapore and Malaysia, democracy in the region took different forms. Indeed in the case of Brunei, democratic institutions took no form at all. More importantly, examining Singapore and Malaysia will allow a comparison in the

later parts of this paper of how far Brunei's current constitutional model has diverged from these two other nations and allow us to infer reasons for the differences in development.

The central argument that this paper seeks to prove is that the reason for Brunei's absolute monarchy is in fact two fold. Firstly, the establishment of the residential system of government by the British funneled untrammled power into one office. The transfer of these powers to the Sultan upon the achievement of internal self-government in 1959 gave rise to the absolute monarchy that we know in Brunei today. It is at this point that comparisons between Brunei, Malaysia and Singapore become pertinent to this study. Should the establishment of the office of Resident be the only reason for the development of an absolute monarchy, Malaysia and Singapore should also have developed along the same lines.

This brings us to the second reason, which is that upon the achievement of self-governance the post colonial process of nation building saw the development of national ideologies in South East Asia. The specific ideology propagated by the Sultan in Brunei was the national ideology of "Melayu Islam Beraja" (hereinafter referred to as MIB) which can loosely be translated as "Malay Islamic Monarchy". This ideology legitimised the preservation of the absolute monarchy in Brunei.

Samuel P. Huntington describes global democratization as arriving in three waves². Each wave was described as a period of time in global history when democratization occurred in many countries at approximately the same time. The first wave of democracy according to Huntington began in the early 19th century and lasted up to 1922. This period saw the granting of suffrage to white males in America and it was also the period in which the French revolution took place in Europe. The second wave of democracy began after the Allied victory in the Second World War in 1942 and ended in 1962. It was in this wave that the democratization of South East Asian nations began. Huntington attributed the beginning of the third wave of democracy to the Carnation Revolution in Portugal in 1974. It was this third wave that to date has seen the biggest rise in the number of democracies in the world. The question as to if the third wave has crested and is in fact over is something that is currently discussed by theorists³. Some theorists question if the events of the Arab spring are in fact the beginnings of a fourth wave of democracy⁴.

² Samuel P. Huntington, *The Third Wave: Democratization in the Late 20th Century*, University of Oklahoma Press (1993)

³ See Larry Jay Diamond, *Is the Third Wave Over?*, *Journal of Democracy* 7.3 (1996) 20- 37 and Larry Jay Diamond, *The End of the Third Wave and the Global Future of Democracy*, Institute for Advanced Studies, Vienna, Political Science Series No. 45, July 1997.

⁴ See Philip N. Howard and Muzammil M. hussain, *Democracy's Fourth Wave? Digital Media and the Arab Spring*, OUP, 2013 and Larry Diamond, *A Fourth Wave or a false start?*, *Foreign Affairs*, 22nd May 2011.

At the outset let me clarify two things. My first clarification is that at no point in this paper will there be a discussion as to the value of democracy as a system of governance over any other system. The focus of my paper being to understand the reasons for Brunei's entrenchment of its monarchy, a philosophical discussion on the superiority of democracy as a mode of governance explains nothing in Brunei's journey from British "colony" to absolute monarchy.

My second qualification is that there will only be limited discourse on the many theories of democracy and constitutionalism. The reason for this being that an in depth study into the vast number of theories and explanations into these two things would leave very little time to answer the actual focus of this paper.

Having made those clarifications, it is useful and pertinent at this juncture to understand Huntington's definition of "Democracy" when he classified time periods into waves. In his book, *The Third Wave*, Huntington defined democracy as "*a political system to the extent that its most powerful collective decision makers are selected through fair, honest and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote*". Huntington also qualified that "*democracy also implies the existence of those civil and political freedoms to speak,*

*publish, assemble and organize that are necessary to political debate and the conduct of electoral campaigns*⁵.

The trend that we can see emerging with the new democracies is the prevalence of a single written document called the constitution. There is also increasingly a move towards homogeneity in the values that these new constitutions seek to protect⁶. Menzel⁷ opines that this single written document seems to have become “ *a necessary element of statehood*” but questions if every state that possesses such a written document embraces the concept of constitutionalism. Menzel considers the failure to embrace the constitutional essentials of democracy, protection of basic rights and the rule of law as the lack of constitutionalism in any given state despite the existence of a document called a constitution. Bearing this in mind, in later chapters when we consider the Brunei constitution, we should question the existence of constitutionalism in Brunei, a country with a single written document called a constitution that does not make any mention of the rule of law and does not in any way shape or form protect any of the basic rights of the people.

⁵ Huntington, *supra* at note 2

⁶ Cheryl Saunders, *Towards a Global Constitutional Gene Pool*, 4 *National Taiwan University Law Review* 2 (2009).

⁷ Jorg Menzel, *Constitutionalism in Southeast Asia*, Volume 3, Konrad Adenauer Stiftung, Singapore (2009).

Despite the tendency of constitutions themselves to possess more similar traits, we see an increasing variance the forms of governance. From this it becomes more and more obvious that constitutionalism takes root differently from state to state depending on factors already existing within the state. The plethora of systems of governance and different practical interpretations of constitutionalism has given rise to a resurgence in interest in comparative constitutional law. The issue with comparative constitutional law in general is its tendency to compare a Western nation with one that is considered less constitutionally developed. The western nation normally being the benchmark to which the less constitutionally developed nation should aspire. To quote a colloquialism, this is like comparing apples to oranges because, with respect to South East Asia for example, the concepts of democracy and constitutionalism are considered western ideals that do not translate smoothly due to substantial cultural and traditional diversity as well as the existence of its own value system⁸.

2.1 Constitutionalism in South East Asia

The civilizations found in South East Asia are ancient. Despite this however, South East Asia was not identified as a distinct region until well after the end of the Second World War. A South East Asian

⁸ Black, Ann, Ideology and Law: The Impact of the MIB Ideology on Law and Dispute Resolution in the Sultanate of Brunei Darussalam, Asian Journal of Comparative Law / Volume 3 / January 2008, pp 1-41 at page 4

identity was forged in this period of the ebbing of colonialism, as many nations in this geographical region achieved nationalist consciousness and were swept up in the second wave of democratization. This initial identity was based on geographical proximity, a similar albeit not identical value system and a shared desire to be self-governing and later to nation build. A tangible manifestation of this South East Asian identity was the formation of the Association of Southeast Asia (the ASA) in 1961, which later became the Association of South East Asian Nations (ASEAN) in 1967.

In trying to forge a national identity in the aftermath of colonialism the universal applicability of western democratic values and institutions in South East Asia were questioned by South East Asian national leaders. Some nations, such as Singapore became proponents of the concept of “Asian Values”. The basic finding of those who subscribed to this concept was that on a fundamental level, the values required of a liberal democracy in fact run contrary to Asian culture⁹. Naysayers of the concept of Asian Values believed that the reluctance of the proponents of Asian Values to adopt a liberal democracy is not so much a problem of intrinsic incompatibility but rather that the “soft” authoritarian regimes that subscribe to Asian Values use it as a “principled defense of their reluctance to broaden

⁹ Seah Chee Meow, *Asian Values and Modernization*, Singapore University Press, 1977.

political participation¹⁰". While "Asian Values" as a concept was highly debated and criticized, what emerged from the period following independence in South East Asia was that the leaders of the South East Asian nations began to advance national ideologies to provide a vision for the future of their respective countries. In Brunei that national ideology was MIB, the impact of which will be further examined in later chapters of this thesis.

2.2 Malaysia in the second wave¹¹

The precursor to Malaysia that was formed in 1957 was the Malayan Federation of 1948. This consisted of 11 Malay states, all of which were in some way under British control. 9 of these 11 states were ruled by a Sultan prior to British involvement. The Malayan Federation gained independence from the British in 1957 and in 1963 became Malaysia with the addition of three other former British territories i.e. Singapore and the two Bornean states of Sabah and Sarawak.

The constitution of Malaysia formed in 1963 was essentially the independence constitution of the Malayan Federation made in 1957

¹⁰ Inoue Tatsuo, *Liberal Democracy and Asian Orientalism*, in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel Bell, Cambridge University Press, 1999.

¹¹ Entire subsection is based on information found in Weiss, Meredith L., *Routledge Handbook of Contemporary Malaysia*, (Routledge) 2015.

that was amended to accommodate the three new states. The Malaysian constitution framed the Malaysian government to be a federal parliamentary democracy with a constitutional monarchy. Governance of the states was divided between the federal government and state government. The division of jurisdiction between the two was set out in the Constitution. Additional executive powers were given to Sabah and Sarawak (the East Malaysian states) as compared to the remaining 11 states. These additional powers were also set out in the constitution. There was to be a strong federal government with only residual powers exercised by the state.

The head of the federal state was the Yang Di- Pertuan Agong (the Agong) who was elected from a pool of the 9 hereditary Sultans of 9 of the Malaysian states. The remaining 4 states did not have Sultans and therefore would not participate in the election of the Agong. The title of Agong was ceremonial and for a term of 5 years. The title was to customarily rotate between the 9 Sultans.

The federal legislature was to be a Westminster style bi- cameral system made up of the fully elected lower house called the 'House of Representatives' or "Dewan Rakyat" and the upper house, made up of a combination of elected and nominated members, called the 'Senate' or "Dewan Negara".

The head of the federal government was the popularly elected Prime Minister. Executive power at a federal level vested in the Cabinet, which was headed by the Prime Minister. The Cabinet was made up of members chosen by the Prime Minister from both the upper and the lower houses of parliament.

The head of state government was the elected Chief Minister of each state.

The legislature of each state, also called the state assembly, was in the form of a unicameral legislature, members of which were elected from single member constituencies on a first past the post system.

The Malaysian Judiciary was to operate on a dual system with the common law being generally applicable and Syariah law being enforced in specific cases dealing with Malaysian Muslims.

The issues that were difficult to resolve in 1963 were not the ones of structure or forms of governance. Instead the difficulty lay in resolving the communal issues of race, language and religion. Ignoring British advice, the Malaysian constitution formally set out Islam as the religion of the federation and Malay as the official

language. Further, the constitution also set out the special status of the Malay and native people.

2.3 Singapore in the second wave¹²

Singapore gained independence from the British and joined Malaysia in 1963. It then broke off from Malaysia in August 1965 and adopted the constitution it had when it was a state of Malaysia as its national constitution supplemented by the Republic of Singapore Act 1965 and the Constitution of Singapore (Amendment) Act 1965.s

Under the original 1965 constitution, Singapore was a parliamentary representative democratic republic. The nominated President was head of state. The head of the Government was the Prime Minister who was normally the leader of the party that formed the majority of the seats in Parliament.

Executive power was to be exercised by the Cabinet, headed by the Prime Minister. The Cabinet was made up of sitting members of Parliament who were then appointed by the President on the advice of the Prime Minister.

¹² Entire section summarized from information obtained in Vasil, R, *Governing Singapore: A history of National Development and Democracy*, Allen & Unwin (2001)

Legislative authority vested in both the President and the Singapore Parliament however the Presidents' legislative authority was nominal at best. The Singapore Parliament was unicameral with members being elected on a first past the post system.

Judicial independence was guaranteed under the Constitution. The Singapore legal system, unlike that of Malaysia was purely based on English Common law. Other notable differences between the Singapore constitution and the Malaysian constitution were firstly the description of Singapore as a secular state and secondly the fact that the Malays were given no special status under the constitution.

2.4 Comparisons between Singapore and Malaysia in the second wave

From the very brief descriptions of the paths that Malaysia and Singapore intended to take on independence it should be noted that in matters that made up the elements of a democracy both countries seemed to by and large adhere to the model. Both consisted of an elected chamber, both saw executive power vested primarily in a cabinet government headed by a prime minister and there was the existence of political parties. The differences between the two lay in the states' stance as to the religion, the rights of the Malays and the

effect of Malaysia being a federation with a constitutional monarchy in contrast with Singapore's individual republic state.

The next step would be to compare how Brunei differed from Singapore and Malaysia and at what point did diversion from the "normal" path occur. A comparison between these three countries provides context to this study and will become possible after examining Brunei's constitutional history.

In order to understand the reasons that Brunei deviates not only from the world trend towards democratization but also from the norm in South East Asia, we would need to delve into Brunei's history. For this reason, the rest of this chapter will give a historical overview of Brunei from approximately 1840 to 1905 highlighting facets of Bruneian governance and society as well as important events that helped to shape Brunei's constitutional history in the early 20th century. It is hoped that an understanding of the historical events in this and the following chapters will help to contextualise the many factors that enabled Brunei to resist democratization and develop into an absolute monarchy, as opposed to a democracy, post British protection.

This chapter first gives a geographic overview of where Brunei lies because a basic understanding of who Brunei shared her borders

with will aid the reader in understanding the significance of the loss of Limbang in this historical narrative.

I will explore the two foreign influences that played a pivotal part in the shaping of the Bruneian borders. Subsequently I will then explain the traditional method of governance that was in place in Brunei prior to the arrival of the British in the mid-nineteenth century. This will include an explanation of the Brunei class structure because traditional Brunei was ruled by the higher echelons of society. In this quasi- feudal method of governance, the system of land administration was also linked to the Bruneian class structure. The system of land administration will be explained in this chapter as the importance of this system of land administration ensured that the Sultan was not all-powerful. An understanding of land administration, class structure and governance and the interplay between the three is necessary to give the reader a foundation upon which the changes that followed the arrival of the British can be understood.

This chapter will then go on to outline the involvement of the British Government in Brunei affairs, charting the circumstances leading up to the signing of the Anglo- Brunei treaty of 1847 and why it became necessary to sign a further treaty in 1888. I will also examine the provisions of these treaties in some detail in order to show a step-by-

step progression of how the British came to be involved in Brunei governance.

Finally I will explore the circumstances that led to the commissioning of the McArthur Report in 1904. I will highlight the key considerations in the making of the recommendations of the report which were instrumental in the ratification of the Supplementary Anglo- Brunei Treaty of 1905/ 1906. This was the treaty that defined the relationship between Brunei and the British Government for the first half of the twentieth century.

3. Overview

3.1 A Geographic Overview

Though the exact origins of Brunei are uncertain, there is evidence to suggest that the Kingdom of Brunei has existed in some form since the 7th Century¹³. At its peak, Brunei is said to have been in control of most of Borneo Island along with parts of the Southern Philippines¹⁴. For the purposes of this chapter however it is enough to know of the geographical locations of Brunei and East Malaysia, both currently and in the mid 19th century.

¹³ Pehin Jawatan Dalam Seri Maharaja Dato Seri Utama Dr. Haji Awang Mohd. Jamil Al- Sufri, *History of Brunei in Brief* (Brunei History Centre, Ministry of Culture Youth and Sports, 2000)

¹⁴ Ibid

Located on the North Eastern tip of Borneo island, modern day Brunei Darussalam currently stands at 2226 square miles¹⁵. Sharing Borneo island with both East Malaysia (the states of Sabah and Sarawak) and Indonesia (Kalimantan), Brunei is bordered to the North by the South China Sea and shares all land borders with the East Malaysian state of Sarawak. Brunei is in fact divided into two parts by the Sarawakian district of Limbang. These borders of Brunei have remained relatively unchanged since the cession of Limbang in 1890. The eastern Malaysian state of Sabah lies to the east again of Sarawak.

In the mid 19th Century, prior to the intrusion of the Brooke family and the British North Borneo Company (hereinafter referred to as 'the BNBC') both the East Malaysian states of Sabah and Sarawak were part of Brunei¹⁶. It is Brunei's loss of what is now East Malaysia to the British that provides the starting point of historical significance for this research.

3.2 The Two Foreign Influences

3.2.1. The Brooke Family- The White Rajahs of Sarawak

¹⁵ *CIA World Factbook 2011* (Skyhorse Publishing, 2010)

¹⁶ *Supra* at note 13

Key to the shrinking of Bruneian borders were the Brooke Family. James Brooke, the first of the Brookes to have dealings with Brunei, was a retired British army officer whose interest in South East Asia was piqued upon reading the accounts of Sir Stamford Raffles' success in Singapore¹⁷. Looking to achieve a similar level of success, he set sail for Singapore on his ship "The Royalist".

While he was in Singapore the antimony wealth of Sarawak, which was then a territory of Brunei, caught his eye. Seizing the opportunity and hoping to carve out a similar niche in Sarawak as Raffles had done in Singapore, he arrived in Sarawak shortly thereafter.

Brooke took the opportunity to befriend Raja Muda Hashim, a close relative to the reigning Sultan of Brunei then, who had been dispatched to Sarawak to quell riots that were taking place there against the Governor of Sarawak (who was also a member of the Brunei royal family)¹⁸. This friendship was a tactical move on the part of James Brooke as Raja Muda Hashim was of a higher noble status than the Governor of Sarawak¹⁹. Eager to quell the riots and having

¹⁷ Tarling, N, Britain, the Brookes and Brunei, Oxford University Press (2001)

¹⁸ Saunders, G, A History of Brunei, Routledge (2002)

¹⁹ Ibid

had no success on his own, Raja Muda Hashim promised Brooke the governorship of Sarawak should Brooke be able to achieve this task²⁰.

Upon Brookes' success in quelling the rioting, he became the Governor of Sarawak in 1842 with the condition that he would pay an annual monetary tribute to the Sultan of Brunei²¹. In 1845, James Brooke was formally appointed as Queen Victoria's confidential agent in Borneo.

In 1845, Raja Muda Hashim returned to Brunei after his stint in Sarawak accompanied by Brooke and British naval forces (who had been brought into this matter by Brooke calling in his old naval ties). Having lost much popularity during his time in Sarawak, Raja Muda Hashim required help from Brooke to forcibly re- instate his claim on the title of Bendahara and as successor to the throne²².

Raja Muda Hashim was subsequently murdered by local chiefs who resented his claim to the throne and also his bringing of British forces

²⁰ It should be noted here that this appointment of Brooke as Governor of Sarawak had to be confirmed by the Sultan. There was an issue with regards to this appointment, however as it does not relate directly to the treaty of 1846, I feel that detailed discussion is unnecessary.

²¹ Saunders, Supra

²² Saunders, Supra

to enforce this claim²³. This murder of Raja Muda Hashim was carried out by the local chiefs with orders from the Sultan.

Seizing the opportunity provided by the internal disturbance in Brunei, Brooke, in his official capacity, enlisted the help of the Admiral Sir Thomas Cochrane of the British Navy to intimidate the newly ascended Sultan Omar Ali Saifuddin II. Brooke's pretext was using that the murder of Raja Muda Hashim for his pro- British tendencies was an insult to his personal prestige and also to the prestige of Britain²⁴.

After a brief exchange of fire, the Sultan who had fled the capital was persuaded to come out of hiding to sign a treaty with James Brooke in 1846, formally recognizing Brooke as the sole and sovereign ruler of Sarawak.²⁵ The gunboat diplomacy that was employed by Brooke in the signing of this treaty that made him the Rajah of Sarawak can be seen in the account of Frank Marryat²⁶ as follows: -

²³ Saunders, Supra

²⁴ Saunders, Supra

²⁵ History of Brunei Darussalam 1800 – 1967, Ministry of Education, Brunei Darussalam, Pan Pacific Publications (S) Pte. Ltd (2000) at pages 45 to 46.

²⁶ Frank Marryat was a British Midshipman who served on the HMS Samarang between 1843 and 1846. His account of the cession of Labuan can be found in his book "Borneo and the Indian Archipelago", Longman Brown Green and Longmans, London (1848)

“... the barge, in which were Lieutenant Baugh (since dead) and myself, was ordered to lie on her oars abreast of the audience chamber, and to keep her 6- pounder, in which there was a fearful dose of grape and canister, pointed at the sultan himself during the whole of the interview... the barge was so placed that the assassination of Mr. Brooke and the Europeans would have been revenged on the first discharge of our gun by the slaughter of hundreds; and in the main street lay the steamer, with a spring on her cable, her half ports up, and guns loaded to the muzzle, awaiting, as by instruction, for the discharge of the gun from the barge, to follow up the work of death. The platform admitted one of the steamer’s guns to look into the audience chamber, the muzzle was pointed direct at the sultan, a man held the lighted tow in his hand.”²⁷

One of the conditions of this treaty was that the Sultan had to write a letter of apology to Her Majesty Queen Victoria for the alleged insult to the British made by the murder of Raja Muda Hashim²⁸.

In this letter the Sultan also offered to cede Labuan, an island territory of Brunei some 42 miles off the Brunei coast, to the British in return for British aid in the suppression of the infighting between the many parties who wanted to claim the Brunei throne, one of whom

²⁷ Ibid at pages 114 to 115.

²⁸ Saunders, *Supra*

had the support and help of Brooke and his warships²⁹. This was a timely offer for the British Government, the reasons for which will be examined later in this chapter when discussing the relationship between Brunei and the British Government.

It seems likely however that the murder of Raja Muda Hashim was simply exploited by Brooke in order to obtain sovereignty over Sarawak and to cease paying the annual monetary tribute to the Sultan of Brunei³⁰. As will be seen later in this research, Brooke continued to harass the Sultan of Brunei for the purposes of expanding his personal domain in the region

3.2.2 The British North Borneo Company- The BNBC

The other key faction in the shrinking of Bruneian borders was the BNBC. The BNBC was set up when Alfred Dent, a British merchant and entrepreneur, who acquired the lease rights to almost the entire

²⁹ Saunders, *Supra*

³⁰ Graham Irwin, *Borneo Abad Kesembilan Belas* (translation by Mohd. Nor Ghani and Noraini Ismail), Dewan Bahasa dan Pustaka, Kuala Lumpur (1986) at pages 157 to 158.

North Borneo for ten years in 1877. Dent and his partners formed a company to develop these leased territories³¹.

The company subsequently acquired a Royal Charter from the British Queen in 1881. The Royal Charter set out the terms under which the BNBC could trade and also set out the rights and responsibilities of the company. Arguably the Royal Charter was a very liberal method of indirect rule over this part of Borneo as it allowed the British Government to set boundaries over North Borneo while not investing in it financially.

Over the years the BNBC administered and developed these leased territories and also bought over the territorial rights of other Bruneian nobles in North Borneo. Despite great improvements to North Borneo under the BNBC, such as the expansion of trade and the development of infrastructure such as a working railway, the BNBC was much reviled by the local North Borneo population for the high taxes that they imposed.

³¹ Secondary History for Brunei Darussalam, Pan Pacific Publications (1993)

3.3. Traditional Bruneian Governance (pre British involvement)

The Salasilah Raja- Raja Brunei (hereinafter referred to as the Salasilah) which translates into “the Laws and Regulations of Bruneian Kings” and Hukum Kanun Brunei (hereinafter referred to as the Hukum) are two of the oldest written Bruneian accounts of the traditional system of governance in Brunei.

The Salasilah contains a list of Bruneian Sultans starting from the first Muslim sultan of Brunei as well as accounts of the rules of various sultans. The Salasilah as a source of Brunei history is given great local regard as it is the most comprehensive account of the Sultans and their varied reigns. The sources used in the compilation of these accounts however would perhaps not stand up to academic scrutiny because record keeping in Brunei was piecemeal at best prior to the coming of the British and historical accounts up to then were normally relayed from one generation to the next by word of mouth.

The Hukum, written during the reign of the 9th and 10th Sultans of Brunei in the late 16th century and early 17th century, is a document containing 44 chapters that cover most aspects of socio- economic life in Brunei. It contains chapters on the rights of the Sultan,

traditional customs, penalties for various crimes and rules governing specific economic transactions and marriage.

It is notable that the rules and punishments as codified in the Hukum have a distinct leaning towards Islamic law in its content.³² As an example of this Islamic leaning, all the articles contained in the Hukum Kanun begin with the words “According to the written law of Allah Most Exalted”³³. Furthermore, the punishment for certain offences, as itemized under the Hukum are well known as punishments under Islamic Syariah law. Examples of this are the punishment of death for a charge of murder as in articles 5 and 8 of the Hukum and the punishment of amputation of a hand for the offence of theft under article 5 of the Hukum³⁴.

Though neither the Hukum nor the Salasilah is a definitive account, they give us valuable insight into how Brunei was run in the pre-British days. Derived from these two sources is an explanation of the stratification of Brunei society in the days before the British.

³² Mahmud Saedon Awang Othman, “*The Implementation and Administration of Islamic Law in Brunei Darussalam*”, Islamic Da’awah Centre, Brunei (2008)

³³ Pehin Jawatan Dalam Seri Maharaja Dato Seri Utama Dr. Haji Awang Mohd. Jamil Al- Sufri, *Survival of Brunei: A Historical Perspective*, Brunei History Centre (2002), at page 29

³⁴ Hukum Kanun Brunei, Brunei Museum.

3.4. The Brunei Class Structure

The Brunei people were divided into four layers of society³⁵. The four layers were as follows: the core nobility (which comprised of the Sultan and Wazirs), the common nobility (Chetria), the aristocrats (Pehin) and the commoners (rakyat).

This stratification of the Brunei people was explained by D.E. Brown in his study of Brunei. Brown observed that the major difference between the nobility and the non- nobles was nearness of patrilineal descent from the crown³⁶. The highest rank of nobility being able to trace their descent from the current or recent Sultans or other high officials. The lower strata of nobility in turn traced their descent from earlier Sultans. At the head of the non- noble classes were aristocrats who were descended from non- Bornean nobility in the ancient past. This was followed by the average Bruneian who was stratified based on their occupation or place of dwelling. The lowest strata of Brunei society as observed by Brown was made up of a class of slaves.

³⁵ D. E. Brown, *Brunei: The Structure and History of a Bornean Malay Sultanate*, BMJ, Vol II, No. 2, 1970

³⁶ Ibid

Each strata of society carried with it different roles and responsibilities. Essentially, as noted by Sweeney in his translation of the *Salasilah*, when looking to appoint anyone, the Sultan would look to the following qualities:

“... the person must first be of noble blood, secondly, he should also be intelligent and thoughtful, thirdly courageous and bold in all undertakings and fourthly, he must also fear and respect the King. If any one of these conditions are not met, the person would be deemed unsuitable for the appointment of minister, warrior or official”³⁷

D.E. Brown goes one step further in his observation of Bruneian society by noting that the exact responsibility of each position was often imprecise.

“Parallel to the division of Brunei society into noble and non- noble strata was a division of offices into those held only by nobles and those held only by non- nobles. At the apex of all was the sultan... The highest ranked and most powerful officials beneath the sultan were four viziers (wazir) usually appointed from among the core

³⁷ Sweeney, P.L.A., “*Silsilah Raja- Raja Berunai*’ Journal of the Malaysian Branch of the Royal Asiatic Society, Vol. XLI, Part 2, 1968, at page 21.

nobility... The duties and privileges of viziers were imprecise except in relation to their appanages. That is, the territorial domains in which they alone administered and taxed the population were very precisely demarcated, while their central governmental functions were vague”³⁸

3.5. The System of Land Administration

Each strata of society (with the exclusion of the slave class) carried with it differing levels of legal rights over land³⁹. To exemplify, with the title of Wazir or Chetria, by virtue of that title one was given the right to vast expanses of land.

Land rights were divided into three main types, the Kerajaan held by the Sultan, the Kuripan held by the Wazirs and the Tulen held by the common nobility. In the case of commoners and slaves, in the absence of a noble title, land ownership was scarce if it existed at all⁴⁰. Dominion over each piece of land as well as the people that lived on that land belonged to the owner of the land. Herein lay the difficulty with this system of governance and land administration.

³⁸ Supra at note 12

³⁹ D. E. Brown, *Brunei: The Social Structure of 19th Century Brunei*, BMJ, Vol I, No. 1, 1969 at page 172

⁴⁰ Ibid

Whilst the Sultan was the overall ruler of Brunei, in internal matters he had no rights over Kuripan or Tulen land and people because similar to a feudal system these lands and the people living on them were only subject to the rules imposed on them by their 'feudal lords'.

The ambit of the Sultan as agreed between the Sultan himself and his Wazirs was to protect the Kingdom against foreign intervention⁴¹, a prospect made difficult, if not impossible by the fact that there being no national treasury and the Sultan was normally too poor to fulfill this responsibility.

All national expenditure came out of the pocket of the Sultan. The best description of this system would be that of a collection of small semi- independent fiefs that nominally recognise a head. As such the Sultan only had the semblance of power that was tenuously given to him so long as he accommodated the wishes of the other nobility who were every bit as powerful as he was.

A byproduct of this manner of governance was that the system of succession was also uncertain. There was no enforcement of a system of primogeniture to the Brunei crown as though a noble may

⁴¹ Ibid

have the bloodline of the previous Sultan he may lack the support of the other nobles, rendering his bloodline effectively useless.⁴²

4. Brunei and the British Government

The relationship between Brunei and the British is of supreme importance to my research as it was this relationship that was the catalyst for the establishment of the British Residency in Brunei. The Residency was the method by which the British government ruled Brunei indirectly and will be discussed in further detail in chapter 2. A discussion of the residency is pivotal to any historical narrative of Bruneian constitutional history as it laid the foundations for the governance of post independence Brunei.

The Sultan of Brunei in the 19th century was increasingly aware of his tenuous position as ruler (due to the traditional methods of governance as discussed earlier in this chapter) and also of the piracy threat Brunei was facing from the Southern Philippines.⁴³

⁴² Ibid

⁴³ Nicholas Tarling, *Britain, the Brookes and Brunei*, Oxford University Press, 1971 at pages 15-17.

To safeguard his position and the country, he started to court foreign “friendship” in order to afford Brunei some protection from the pirates. Brunei’s first foray into such a relationship was in fact with the East India Company⁴⁴. This relationship was however short lived and the Sultan was looking to establish a similar arrangement with another foreign entity.

The British Government, while not seeking to expand their territory in Asia in the mid 19th Century, were keen to establish a base in Southeast Asia as it was on the trade route to China. Furthermore, with the French establishing a base in Saigon and the Spaniards in the Philippines, the establishment of a base in Southeast Asia became more important to ensure that the British had a foothold on this increasingly contested corner of Asia without which, the South China Sea would be closed to them⁴⁵. Five harbours of great value were identified in the area, Labuan being one of them. The merits of Labuan were outlined to the Foreign Office in the a report as follows:-

“By this cession Great Britain obtained possession of an island containing a fine harbour, capable of harbouring vessels of war, and also commanding the entrance to the River Brunei, in fact, a naval station which gave her the command over the whole north- western

⁴⁴ Ibid

⁴⁵ Report of Mr. St. John 9th August 1860- FO 881/2514 at pages 4 to 5

coast of Borneo. Great Britain also obtained at the same time valuable coalmines... The mercantile community in Great Britain were strongly in favour of such a measure; the Sultan of Borneo has offered to cede the island; a favourable report had been made about the harbour; the account of the climate was satisfactory; and it was the opinion of Her Majesty's Government that this island possessed many of the qualifications necessary for such a station as was wanted in that part of the world, particularly as other Powers had shown a disposition to obtain a footing on the Borneo coast."⁴⁶

The British Government secured this aim of establishing a base by cession of Labuan to the British Government in 1846 and thereafter the treaty signed between Brunei and the British Government in 1847.

4.1. The Cession of Labuan 1846

The British consideration of Labuan as its base in South East Asia began as early as 1843 when the ship the "Samarang" under the

⁴⁶ Observations made by Lord Palmerston on behalf of Her Majesty's Government contained in a letter to the Admiralty. Quoted in the secondary from FO 881/2514 at pages 6 to 7

command of Captain Sir Edmund Belcher was sent by the British Government to report on the viability of Labuan as a British base⁴⁷.

Upon Belcher's return to Britain in 1844 the Sultan of Brunei, in furtherance of Brunei's desire for aid and protection, sent the British government a letter via Belcher. An excerpt of this letter is reproduced below: -

"This letter is addressed by Sultan Omar Ali and Raja Muda Hashim as rulers of the State of Brunei to the Queen of England. The Sultan and Raja Muda Hashim desire to gain the friendship and aid of the Queen of England for the suppression of piracy and the encouragement and extension of trade, and to assist in forwarding these objects, they are willing to cede to the Queen of England the island of Labuan and its islets on such terms as may hereafter be arranged by any person appointed by Her Majesty"⁴⁸.

As previously mentioned, in 1846, after Brooke was made the sovereign of Sarawak, the Sultan wrote a letter of apology to Her

⁴⁷ Original correspondence found in FO 12/2. \

⁴⁸ Translation from original Malay correspondence quoted in the secondary from M. Hall, *Labuan Story, Memoirs of a Small Island*, Chung Nam Printing Co., Jesselton 1958 at page 95.

Majesty Queen Victoria and in this letter, the Sultan offered again to cede Labuan to the British.

Capitalising on the unrest in the region and the repeated offer of Labuan by the Sultan of Brunei, the British Government obtained Labuan via a treaty signed on 24th December 1846.

The circumstances surrounding the cession of Labuan are interpreted differently by different scholars. Bruneian scholars⁴⁹ seem to be of the opinion that Labuan was given to the British under duress whereas non- Bruneian scholars⁵⁰ tend to view it as a quid pro quo arrangement in exchange for British help in suppressing piracy⁵¹. To shed light on this discrepancy it is helpful to look at the account given by Captain Rodney Mundy who was the representative of the British Government ordered to oversee the voluntary cession of Labuan⁵². Mundy in his account states that he sent "Lieutenant Little in charge of the boats of the Iris and Wolf, armed with twenty marines, to the capital, with orders to moor them

⁴⁹ B.A Hussainmiya and Pehin Jawatan Dalam Seri Maharaja Dato Seri Utama Dr Haji Awang Mohd Jamil Al- Sufri amongst others

⁵⁰ Such as Graham Saunders and Nicholas Tarling

⁵¹ This disparity is perhaps due to the respect that the position of Sultan now commands in Brunei giving rise to the situation where nothing negative would be written about the Sultan. This situation is further discussed in the concluding chapter of this work.

⁵² Account found in the secondary in W.H.Treacher, *British Borneo: Sketches of Brunai, Sarawak, Labuan and North Borneo*, Singapore Government Print Department, 1891 at pages 85- 88.

in line of battle opposite the Sultan's palace, and to await my (Captain Mundy's) arrival". Mundy then goes on to describe that the Sultan upon receipt of the treaty attempted to negotiate some of the terms, in particular on the issue of a monetary payment in exchange for the cession of Labuan. Mundy was not keen to negotiate and instead told the Sultan firmly that he was to "Bobo chop bobo chop". A translation of this is "Affix the seal affix the seal" referring to the Sultan's Royal seal. Perhaps in this account lies a reason for the discrepancy.

From the perspective of the Brunei scholar it is not surprising that the unwillingness of the British to negotiate terms combined with the boats lined up for battle facing the palace would lead to the conclusion that there were indeed strong- arm tactics employed in the cession of Labuan.

To the non- Bruneian scholar the previous offers of Labuan to the British by the Sultan combined with the orders given to Mundy could lend themselves to the conclusion that the cession of Labuan was voluntary.

In whatever circumstances however, the loss of Labuan to the British undoubtedly contributed to the Sultan's feeling of insecurity over the shrinking of his Sultanate. This insecurity was a factor that, as we shall see later in this research, would influence the Sultan's decisions and actions with regards to ruling the Sultanate.

The treaty itself made provision for "eternal friendship" between the two countries and for the cession of Labuan to the British Government. In return, the Queen would use her best endeavours to suppress piracy affecting Brunei and to protect lawful commerce between the two countries.

The consideration given to Brunei for the cession of Labuan was the subject matter of the treaty of 1847 signed shortly thereafter.

4.2. The Anglo- Brunei Treaty of Friendship and Commerce 1847

The Treaty of Friendship and Commerce was signed on 27th May 1847. The significance of this treaty for the purposes of this research lies in that fact that it was the first formal document setting out the official relationship between Brunei and the British Government. It

signaled the start of official British Government relations in Brunei history.

The treaty contained thirteen articles in total, which defined the commercial scope of the British Government in Brunei, contained clauses to facilitate trade and also extracted a responsibility for the British Government to aid the Sultan in the suppression of piracy.

Details of the articles particularly relevant to this aim are: -

Article 2 of the 1847 treaty states “The subjects of Her Britannic Majesty shall have full liberty to enter into, reside in, trade with, and pass with their merchandise through all parts of the dominions of His Highness the Sultan of Borneo, and they shall enjoy therein all the privileges and advantages with respect to commerce, or otherwise, which are not or which may hereafter be granted to the subjects or citizens of the most favoured nation”. The granting of most favoured nation status to Britain ensured the smooth facilitation of trade between the two nations. This focus on facilitating trade was furthered by Articles 3 to 7 of the 1847 treaty, which between them dealt with the purchase of property⁵³, imports and exports⁵⁴, taxes

⁵³ Article 3 1847 treaty

⁵⁴ Article 4 1847 treaty

and duties on goods⁵⁵ and permission for British ships to enter Brunei waters to take on required provisions⁵⁶.

Article 9 of the treaty states “Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the Sultan of Borneo hereby engages to use every means in their power of the suppression of piracy within the seas, straits and rivers subject to their respective control or influence...” This article details the promise made by the British Government to aid Brunei against piracy, as consideration for the cession of Labuan to the British.

In essence, in line with the British intention to keep the China Sea open to them, this treaty was signed to solidify trade relations between Brunei and the British.

4.3. The Amanat 1885

In 1868 James Brooke died and the title of Rajah passed to his nephew Charles Brooke. Charles Brooke shared the same ambitions

⁵⁵ Articles 5 and 6 1847 treaty

⁵⁶ Article 7 1847 treaty

of his uncle before him, i.e. to continue expanding Sarawak by acquiring more and more Brunei territory⁵⁷.

With Charles Brooke to the West and the BNBC to the East, there was a real possibility that Brunei would cease to exist.

In an attempt to ensure survival, Sultan Abdul Mumin, the Sultan in 1885 met with his fellow nobles and between them signed an agreement not to cede, lease or in any way discharge any more territories to foreign powers for fear of the extinction of the kingdom. This agreement called the "Amanat" was signed on 20th February 1885. The Amanat also tried to bind the future rulers of Brunei and future nobility to do the same. Further, the Amanat protected the right of private property and stated the importance of inheritance of land and slaves in accordance with old Brunei customs⁵⁸.

The effectiveness of this Amanat was questionable for shortly thereafter, Brunei lost the territory of Trusan through an arrangement between the Temenggong (one of the signatories to the Amanat). While laudable in its intention, there was no penalty for going against it and that was its weakness. This weakness is highlighted here

⁵⁷ Tarling, *Supra* at note 17

⁵⁸ Brunei Museum Journal, Vol. 3 No. 2 (1974)

because the ineffectiveness of the Amanat was a prime reason for the loss of Trusan and led to the start of the Brookes' claim to Limbang.

Whilst aware of the scramble for Brunei territory between the BNBC and the White Rajah, the British Government did not actively involve themselves in the situation. The British Government wanted Brunei to remain in British hands (as opposed to that of another foreign power) and either the White Rajah in Sarawak or the BNBC in Sabah would suffice, as these were considered private British interests and not foreign intervention⁵⁹.

Brunei had not proved to be of much economic value and as such the British were not interested in investing financially. The cheapest option that would still meet the objectives of the British Government was to leave Brunei to the British influences that were already embedded in a race for Brunei's territory, i.e. the White Rajah of Sarawak and the BNBC.

4.4. The Protectorate Agreement of 1888

⁵⁹ Correspondence in CO 943

For the British Government the agreement of 1888 was seen as a consolidation of British interests in Borneo. They were aware that Brunei seemed to be losing territory at a very fast rate and could foresee the possibility that Brunei would cease to exist should the present state of affairs continue⁶⁰G. To exemplify the British position we turn to the Confidential minute by Lord Salisbury of the Foreign Office to Sir Julian Pauncefoot of the Foreign Office in January 1888:

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“My impression on reading these papers, is that the North Borneo Company and Sarawak are crushing out the Sultan between them and the process is going on with some rapidity. I think we had better let them finish it, and make no agreement with the Sultan of Brunei which would stand in the way of a consummation which is inevitable and, on the whole, desirable”⁶¹

This is not to say that the British entered into the agreement knowing that Brunei would disappear but rather that it was one of the many options that was foreseeable and not entirely undesirable to the British, bearing in mind, as previously mentioned, the British government was interested in Brunei remaining under the British

⁶⁰Various Government correspondence at FO 572/2

⁶¹ Ibid

sphere of influence and not so much in Brunei actually being administered by the British Government.

For the Sultan of Brunei however, the 1888 agreement was viewed as something that would save the nation from extinction.⁶²

Sir Hugh Low was sent on behalf of the British Government to sign the Protectorate Treaty of 1888, which would place Brunei foreign relations in the hands of the British Government. Similar treaties were also signed with Sarawak and British North Borneo earlier in the year.

As shall be discussed in the following chapters, part of the signing of protectorate agreements with all the territories in North Borneo was probably to form a North Borneo territory. This idea of the British came to be more relevant in 1950's Brunei in the lead up to the drafting of the constitution. This will be elaborated on in further detail later in this research.

⁶² Singh, D.S. Ranjit, *Brunei 1839- 1983: The Problems of Political Survival*, Oxford University Press (1984)

Despite being a short eight articles, the significance of this treaty was that signaled the start of British Government involvement in Bruneian governance. Significant clauses of the agreement are examined below.

“Article 1- The State of Brunei shall continue to be governed and administered by the said Sultan Hashim Jalilul Alam Akamadin and his successors as an independent State, under the protection of Great Britain; but such protection shall confer no right on Her Majesty’s Government to interfere with the internal administration of that State further than is herein provided”⁶³

This clause in the agreement makes clear that Brunei retained a large amount of her sovereignty and was still recognized as a separate state and not a colony of the British. There is an attempt to qualify the extent to which the British Government can interfere with the internal affairs of Brunei by specifying the internal matters to which the British would have a say within the other articles of the agreement which are discussed below.

“Article II- In case any question should hereafter arise respecting the right of succession to the present or any future Ruler of Brunei, such

⁶³ Agreement Between the Sultan of Brunei and Her Britannic Majesty’s Government Signed on 17th September 1888- Brunei Annual Report 1946, p. 80- 81.

question shall be referred to Her Majesty's Government for decision"⁶⁴

The effect of this clause is that practically, as the rules of primogeniture did not apply strictly in Brunei, the British Government had the power to decide who the next Sultan would be to some extent.

"Article III- The relations between the State of Brunei and all foreign States, including the States of Sarawak and North Borneo shall be conducted by Her Majesty's Government, and all communications shall be carried on exclusively through Her Majesty's Government, or in accordance with its directions; and if any difference should arise between the Sultan of Brunei and the Government of any other State, the Sultan of Brunei agrees to abide by the decision of Her Majesty's Government, and to take all necessary measures to give effect hereto"⁶⁵

By this clause, Brunei surrendered full control of her external affairs to the British, regardless of the Sultan's position on the matter.

"Article VI- No cession or other alienation of any part of the territory of the State of Brunei shall be made by the Sultan to any foreign

⁶⁴ Ibid

⁶⁵ Ibid

State, or the subjects or citizens thereof, without the consent of Her Majesty's Government..."⁶⁶

Under this clause, the British Government put to bed the worry that other European rivals would take advantage of the political instability in Brunei to get a footing on the trade routes that passed through Brunei.

In short this treaty put Brunei under the sphere of British protection by giving the British Government rights over external affairs, however leaving the internal governance of the country by and large still under the Sultan.

5. The McArthur Report⁶⁷

The MacArthur Report was commissioned by the British Government to allow them to decide on the future of Brunei.

The purpose of the report on Brunei that was done by Malcolm Stewart Hannibal McArthur (hereinafter referred to as McArthur) was to study the local conditions for the purposes of making recommendations for the future administration of Brunei.

⁶⁶ Ibid

⁶⁷ FO 572/39, pp 4f-48

The stimulus for McArthur being sent was that the British Government had been in receipt of numerous accounts of the “unsatisfactory character” of the Brunei administration, so he was also asked to investigate the various complaints made against the Sultan and his officials. Additionally, he was to conceal the exact nature of his mission from the Brunei Malays to ensure that he would get the opinion of the Brunei common people as to how they should be governed⁶⁸

Accounts received by the Colonial office that had been written by previous Consuls to Borneo⁶⁹ had been found wanting. As was explained by a foreign office official to the Secretary of State:

“For a long time past we (the Foreign Office) have had difficulty in obtaining correct information about the state of affairs (in Brunei), or, rather, in checking the contradictory reports to which conflicting interests have given rise. We have had a consul for Brunei but the salary has not been sufficient to prove an attraction, and the climate has been declared so bad as to necessitate residence in Labuan. For

⁶⁸ A.V.M. Horton, *Report on Brunei in 1904- M.S.H. MacArthur* (Ohio University Monograph in International Studies 1987) Pages 3 to 4

⁶⁹ The Consul to Borneo was the highest ranking British government officer in Borneo at the time whose job it was to deal with the administration of British territories on Borneo island.

these reasons and some others of a personal character, the duties of the post have not been satisfactorily performed”⁷⁰

In addition, the accounts received by the Colonial Office from the Rajah of Sarawak and his followers were far from impartial due to the Rajah’s desire to absorb what remained of Brunei into his Raj.

McArthur’s desire to provide a comprehensive account in his report led to him being the first Consul, acting or otherwise, to actually stay in mainland Brunei, all his predecessors preferring to reside in Labuan⁷¹. His refusal to consult with the Rajah on the matter of Brunei during or prior to his stay was well thought out. His demeanor towards the Sultan and interest in the common people of Brunei was well received⁷².

“The impact of the new acting consul’s consideration for his highness was doubtless highlighted by the contrast with former consuls, who were variously brusque, disrespectful, or drunk, and all of whom furthered the cause of Sarawak. (Indeed, one acting consul was a retired Sarawak Officer.”⁷³

⁷⁰ FO 12/128 p. 408ff., memorandum by F.H Villiers, 3 June 1905.

⁷¹ A V M Horton, *Supra* at note 67

⁷² A V M Horton, *Supra* at note 67

⁷³ A.V.M. Horton, *Report on Brunei in 1904- M.S.H. MacArthur* (Ohio University Monograph in International Studies 1987) Page 9

The first written assessment by McArthur of the situation in Brunei was specifically on the conditions around the river Belait and the river Tutong, where there had been a number of small disturbances. This assessment was entitled “Notes on a Visit to the Rivers Belait and Tutong”⁷⁴. Here he concluded that though there were indeed complaints against the Sultan by subjects in Belait and Tutong, the widespread support for the Rajah of Sarawak was perhaps rather exaggerated and skewed by supporters of the Rajah.

“... The accounts I received on the spot agree in the main with those reported, but do not give me so strong an impression of wanton cruelty... It should, however be remembered that the accounts given at the time were those of biased refugees to Limbang and Labuan, and that the other side of the question was not heard...”⁷⁵

The McArthur report itself is 146 paragraphs long and is a comprehensive summary of the conditions in Brunei at the time, ranging in its coverage from the geography of Brunei in 1904 to issues of succession and ending with the various options McArthur felt were available to the British government in respect of Brunei.

The following is a consideration of the report in more detail, focusing primarily on themes in the report that were the factors considered by

⁷⁴ FO 12/126, pp. 146- 152

⁷⁵ FO 12/126, pp. 146- 152 at paragraph 15.

McArthur in coming up with solutions as to the future of Brunei. The themes shall be discussed in more detail under the following headings: -

- Natural Wealth
- The Sultan, Government and Constitution
- Problems resulting from system of governance
- The relationship between the Sultan and Consul
- Limbang
- Possible Solutions

5.1. Natural Wealth

It is important to note that at the time that the report was written, the oil wealth that Brunei is now synonymous with had not entered the equation. Oil was discovered in Brunei in 1929 and while the wealth that came with it has played a part in the shaping of the country, it was not yet a consideration in 1904. McArthur does however discuss the natural wealth in Brunei to some degree.⁷⁶

McArthur found that there was some degree of natural wealth in Brunei in the form of antimony, jungle produce, coal and oil. It seems evident from his findings that he was unsure of the value of the oil

⁷⁶ FO 572/39, pp 4f-48 at paragraphs 87 to 91

extracted and feels that Brunei should concentrate on the coal mining and that antimony and other jungle produce could provide a steady flow of income for the country.⁷⁷

The problem with Brunei's natural wealth was one of administration. The ineffective system of governance, the system of land administration that was not easily understood and poor infrastructure meant it was difficult to entice investments into the country and made it near impossible to capitalize on what little income the natural wealth could generate⁷⁸.

"Various concessions for minerals have been from time to time obtained, but no success has as yet attended the efforts of the concessionaires. I believe the explanation to lie in the weakness of the Government, which makes the investment of capital risky, and in the undeveloped state of the country, which makes the expense of winning minerals or bringing them on the market prohibitive"⁷⁹

While geographically in a desirable location, these factors perhaps make it easy to see why the interest of the British government in Brunei was initially limited to ensuring that it remained under the

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Ibid at paragraph 6

British sphere of influence with minimal cost to the British Government.

5.2. The Sultan, Government and Constitution

“The Government of Brunei is despotic in theory, the Sultan being the sovereign of the whole territory. As, however, the State is divided up into negri and hamba kerajaan, or Crown property, and negri and hamba kuripan, or official property, and negri and hamba tulin, or hereditary private property, it would, I think, be more accurate to describe the country as an aggregation of small and semi-independent fiefs acknowledging one head”⁸⁰

In essence, the system of governance was tied to the idea of land ownership⁸¹ and the above observation by McArthur is an accurate representation of how Brunei was governed. From the language used, it can be deduced from this extract that McArthur did not consider this system of governance acceptable. The problems associated with this system have been discussed previously in this chapter.

⁸⁰ Ibid at paragraph 8

⁸¹ Further detail of this system of land ownership has been given in a separate section earlier in this paper.

The Sultan was traditionally assisted by four ministers of the state, all of who had separate functions. Important state documents required the seal of these four ministers, indirectly imposing a requirement that they be consulted in state affairs and in essence putting a rough and ready system of checks and balances on the Sultan. These roles were normally filled by members of the royal family. The four ministers and their scope were as follows: -

- i. **Pengiran Bendahara**- holder of the highest position in the state next to the Sultan. Responsible for the internal affairs of the country. Keeper of the State Archives and formed a Court of Appeal from the decisions of the other ministers.
- ii. **Pengiran Di Gadong**- Treasurer and tax- collector.
- iii. **Pengiran Pemancha**- Deputy of the Pengiran Di Gadong
- iv. **Pengiran Temenggong**- In charge of state forces, lead expeditions and carried out executions.⁸²

Practically, this system lead to a situation of fragmented power with each of the aforementioned officials working to serve their own self-interests as observed accurately by McArthur in his report

“... they are all working against the Sultan and each other and only keep up a superficial show of cordiality. The result is unfortunate. His

⁸² FO 572/39, pp 4f-48 at paragraphs 10 to 12

Highness is surrounded by lesser chiefs and by relations, all of whom have private interests to serve in every matter that comes before him. The advice he receives from them is generally against the best interests of himself and of Brunei”⁸³

A recurring theme at many points throughout the report is that the Sultan has no power to govern which was cause for many of the troubles in Brunei at the time. There seems to be a general lack of respect for the Sultan as seen by McArthur’s following observation

“I do not know what may have been the case in the past; I can only say that the Sultan appears to exercise little or no real power in Brunei at the present time. His attempts to deal with individuals generally fail; the intended victim generally curries favour with some powerful chief and defies the Sultan’s authority. The kampongs (villages) into which the town is divided have headmen of their own, who settle matters without much reference to him. The only direct control which His Highness and members of his so- called government exercise is over their own uluns, or household slaves, many of whom have been turned off owing to the poverty of their masters and left to fend for themselves”⁸⁴.

⁸³ Ibid at paragraph 13

⁸⁴ Ibid at paragraph 34

It seems as if the Sultan was merely a figurehead whose power to rule on any given day was entirely dependent on the state of his personal relationship with the other nobles at any given time.

“The curious constitution of the country makes the Sultan only supreme in name, and his position is so much a matter of accommodation with Ministers as strong as himself that it seems unfair to expect him to risk, an open breach with them.”⁸⁵

5.3 Resulting Problems

5.3.1. No Central Funds

Firstly, due to the manner in which land ownership was administered, i.e. with some plots of land and its resulting revenue belonging to a noble as his hereditary right and some as part of his office, there was no way of keeping revenue from either stream distinct. This distinction was important because the revenue obtained as part of office should have been used for the maintenance of the responsibilities that came with the office and not used for personal expenses as they tended to be. As a result of this, there were no funds to be used to develop the infrastructure of the country.

⁸⁵ Ibid at paragraph 42.

Secondly, there were no written rules for what could or could not be done with the land and resultant revenue that a noble had as part of his office. The effect of this was that the revenue from those lands was often leased away in advance for years to allow the noble to maintain his elaborate lifestyle.⁸⁶

“There would, of course, be no objection to the cession of these districts which would go to the holders of office, but in many cases these annual payments have been capitalized, and even where that has not been done, cash advances have been obtained from private speculators who hold documents entitling them to draw the cession money annually as it falls due.”⁸⁷

5.3.2. No Public Administration

As discussed above, there was no system of governance in place that McArthur deemed “proper” which in my view is a direct result of the lack of central funds. There were no public services available as observed in the following

“There are no salaried officers—unless the Pengirans Bendahara and Pemancha can be so described—no forces, no police, no public

⁸⁶ Ibid at paragraph 14

⁸⁷ Ibid at paragraph 14

institutions, no coinage, no roads, no public buildings—except a wooden mosque, and—most crying need of all—no gaol. There is the semblance of a Judicature, but little justice. Cases are sometimes tried before the Sultan or Pengiran Bendahara, but it is not often that the Brunei people have recourse to these tribunals, for the fees—not so much for a hearing as for a verdict—are, in the Bendahara’s court at least, prohibitive; and, as a rule, cases are settled by a system of arbitration among the recognized, if not authorized, headmen of kampungs (villages)”⁸⁸

5.3.3. Oppression

Oppression was most often seen in the form of high taxes that were due as and when the noble required. As the nobles leased more of their property, the burden of taxes weighed more heavily upon the serfs on the lands that they were still able to collect any revenue from. With no checks and balances on the amount that could be taxed, the serfs suffered.

“The irresponsible power possessed by the owners naturally lends itself to the gross acts of cruelty and oppression.”⁸⁹

⁸⁸ Ibid at paragraph 55. Also cross reference to the intended composition of the modern Brunei Legislative Council where the village headmen were intended to retain their significance, being the only unappointed members of the said council.

⁸⁹ Ibid at paragraph 58.

5.3.4 Issues of Succession

While the nominated successor to the throne was the eldest son of the current Sultan, as previously explained, primogeniture is secondary to the support of the successor from other nobles.

McArthur highlighted the fact that he did not believe the crown prince to be of much standing either with the people of Brunei or in an intellectual capacity. McArthur went so far as to call the crown prince an “imbecile”⁹⁰ and believed that there would be much opposition to his taking the throne on the death of the present Sultan. McArthur highlighted the other candidates who would likely contest his succession⁹¹. Needless to say, a rush for the throne would further destabilize a country that was already barely surviving.

5.4. The Relationship between Sultan and Consul

Many of the accounts of Brunei prior to McArthur painted a wholly unpleasant picture of not only the country but also of the Sultan. While the reports of the Sultan’s intransigence and refusal to heed his treaty obligations⁹² is not wholly untrue, it had perhaps been

⁹⁰ Ibid at paragraph 70

⁹¹ Ibid at paragraphs 69 to 71

⁹² Under the 1888 treaty, which has been discussed previously.

omitted until the McArthur report the possible reasons behind the Sultan's behaviour.

These reasons were very neatly summarized in the report as follows:

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“His character has so often formed the subject in recent years of the most uncomplimentary reports that I feel bound in common justice to him to point out how much his alleged contumacy and disregard of his Treaty obligations is the result of the unsympathetic way in which, in my opinion, he has often been treated. His attitude is, in the main, the result of the Limbang episode, the decision in regard to which has impoverished his country, weakened his prestige among his subjects, and destroyed his faith in His Majesty's Government. The establishment of the Consulate in Labuan, 42 miles away across a stormy bay, has done much to widen the breach. There is no direct or regular means of communication between the two places and, as a result, Consular visits have been few and far between. The Consul has had to depend on interested persons for his knowledge of what is going on in the State in which his work ought principally to lie, and his visits, made either in a man- of- war or in a Sarawak steamer, have been undertaken as a rule either to coerce the Brunei Government or to demand the immediate payment of an indemnity or claim. It does not seem to me possible that any satisfactory relations

with a Malay ruler can be maintained on such lines, and it seems inevitable that the Sultan should in such circumstances look upon the Consul as his enemy.”⁹³

McArthur’s time in Brunei and his general demeanor went a long way towards repairing the relationship between the Sultan and Consul and was perhaps the actual start of the success of the residential system in Brunei.

5.5 Limbang

Central to the relationship between the Sultan and the British Government via its Consuls was the ill will that was born out of the annexation of Limbang to Rajah Brooke.

Limbang had been in a state of unrest from approximately 1860. The unrest was predominantly the cause of oppressive taxation of the people of Limbang by the Temenggong, the owner of the tulen land rights. The Temenggong at the time was the heir apparent to the Brunei throne and was in fact by and large administering the sultanate as the reigning Sultan was in very ill health.⁹⁴

⁹³ FO 572/39, pp 4f-48 at paragraph 60

⁹⁴ Eastern Confidential Report No. 97 to be foundt at FC) 24/1087

The uprisings in Limbang however escalated and in 1884 led to the killing of Sarawakian natives in Limbang⁹⁵.

It was at this point that Brooke started his involvement in this affair. Brooke demanded compensation for the loss of lives of his natives. The Sultan sought assistance from the Acting Consul General for Borneo, Mr. Treacher, in negotiating a settlement between Brooke and the Temenggong. The Rajah was demanding financial compensation, which the Temenggong could not afford. Instead Rajah Brooke was offered the rights to Trusan instead, contrary to the promise the Temenggong had made in signing the Amanat. Believing himself to have the upper hand, Brooke entered into negotiations for the rights over Limbang at the same time⁹⁶.

The BNBC was also making offers for the rights over Limbang as part of the scramble for Brunei as previously mentioned. Whilst negotiations were still being made between Brooke, the BNBC and Brunei with respect to the fate of Trusan and Limbang, the old Sultan of Brunei died and was succeeded by the Temenggong⁹⁷.

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid

The newly appointed Sultan confirmed the handing over of Trusan to Brooke but refused to give up Limbang, citing the Amanat that he had signed in 1885.

Sir Francis Weld was sent to Brunei in 1887⁹⁸ on behalf of the British Government to assess the situation in Brunei and also to try and convince the Sultan to agree to give up Limbang.

Weld's subsequent report was that the situation with respect to Limbang was impossible to resolve as the Sultan remained adamant in his refusal. It was at this stage that the idea of a residential system, modeled on states in Peninsula Malaysia, was suggested by Weld to the Colonial Office.

Under this residential system, the British Resident would be consulted on all affairs of state other than those concerning religion⁹⁹.

We will see in the next chapter that Brunei did indeed eventually come to have a residential system, however at this point the proposal

⁹⁸ Ibid at page 12

⁹⁹ Ibid

was turned down due to the cost of implementing such a system in Brunei, a country that was deemed unable to pay for itself.¹⁰⁰

The response of the Colonial Office to the report by Weld, was to say that it would approve the cession of Limbang to Sarawak on the conditions that all the people who owned rights over Limbang agreed to the cession, due consideration be paid to them and that the Amanat be considered cancelled. The Sultan's continued disagreement in this matter further aggravated Brooke.

Sir Hugh Low, who was sent to officiate the signing of the 1888 treaty as discussed previously in this chapter, was given a secondary objective in Brunei. That secondary objective was to try and get the Sultan to agree to the cession of Limbang to Sarawak, bringing the Sultan's attention to the obligations under the treaty of 1888 with regards to the acceptance of British decisions in matters where there is a disagreement between the Sultan and the government of any other state, in this case the state of Sarawak. The Sultan was recalcitrant as ever. Sir Low returned to Britain to allow the colonial office time to decide on the next steps in the matter.

¹⁰⁰ Ibid at page 14

All negotiations however became moot when approximately one year later on 17th March 1890, Brooke forcibly entered Limbang.

“... before anything could be done Rajah Brooke entered the Limbang river with an armed force, hoisted the Sarawak flag, and issued a proclamation declaring that the district was annexed to Sarawak ‘unless Her Majesty the Queen of England may see fit to decide otherwise’. In the same proclamation he promised to pay a fair yearly sum to the Government of Brunei in compensation. As soon as his occupation was effected, he began to build stockades and Government buildings.”¹⁰¹

Brooke’s reasons for the annexation were that the Brunei government had failed to exercise their rights in Limbang for the past few years and also that the people of Limbang preferred to be under Sarawakian rule and had forced him into action.

The Colonial Office then sent the Consul to Borneo to determine the truth of Brookes’ claims and also dispatched the Governor of the Straits Settlements to Brunei to convince the Sultan to agree to the annexation of Limbang. The Consul returned confirming that Brunei

¹⁰¹ Ibid at page 17

had not of late exercised any sovereign rights over Limbang and that the village chiefs were in support of the annexation¹⁰².

The Governor recommended that the British government allow Brooke to retain Limbang so long as fair compensation is paid to the Brunei Sultan. This recommendation of the Governor was adopted though it was intimated to Brooke via correspondence that the British Government did not approve of the tactics that were used¹⁰³. Efforts were then put into the negotiating of a fair compensation for the Sultan. The Sultan continued for the next 15 years or so to write letters to the British Government seeking the return of Limbang to Brunei¹⁰⁴.

The Sultan of Brunei felt let down by the British Government, when contrary to the agreement to protect, as was his understanding of the purpose of the 1888 agreement, the British government acquiesced to the annexation of Limbang by the Rajah of Sarawak¹⁰⁵.

McArthur made numerous mentions of the issue of Limbang in his report. One of the very real solutions being considered by the British

¹⁰² There is some dispute as to if the feeling of the people was really for the annexation as the Consul only interviewed 15 out of a possible 33 village headmen.

¹⁰³ FO 572/39, pp 4f-48 at page 19 and FO 12/89 Correspondence from the Foreign office to Sir C. Smith the Governor of the Straits Settlements.

¹⁰⁴ FO 12/89- Various Correspondence between the Sultan and the Colonial Office

¹⁰⁵ Ibid

Government for the future of Brunei was to allow it to be absorbed by either Sarawak or the British North Borneo Company. The mission set for McArthur was to examine the conditions in Brunei to see which of the solutions would prove to be most effective. Invariably, the issue of the loss of Limbang to Sarawak, was a sticking point for many Bruneian nobles, the Sultan in particular.

The main argument offered as evidence by the Rajah of Sarawak in favour of his actions was that the annexation of Limbang to Sarawak was for the overall benefit of the people of Brunei and also in accordance with the wishes of the population of Limbang.

Contrary to this, McArthur found that the loss of Limbang was in fact devastating to Brunei as the geography of Limbang (which sits between two parts of Brunei) and the river that runs through it (which forms the only main waterway connecting the two halves of Brunei) were the main arteries of trade. Furthermore, McArthur also found some evidence to suggest that the alleged preference of the Limbang people to be ruled by the Rajah was in fact the byproduct of the Rajah exploiting a feud between two Brunei nobles who saw each other as rivals for the eventual throne¹⁰⁶. To this effect the McArthur report found that the loss of Limbang was a true loss for Brunei and not in its best interests as claimed.

¹⁰⁶FO 572/39, pp 4f-48 at paragraphs 72 to 81

“It is, of course, impossible now to form any true conception of the cruelty and extortion which were at one time considered sufficient justification for the Rajah’s occupation of the Limbang: but for the reasons given above I venture to submit that His Highness’ intervention has punished innocent as well as guilty, and that the loss of the Limbang is a real loss to all Brunei, and not only to its unworthy owners”¹⁰⁷.

5.6. Possible Solutions

McArthur surmised in light of his findings that there were four available options: -

- a. to encourage the BNBC to acquire what remains of Brunei
- b. to consent to the absorption of Brunei by Sarawak
- c. to support the present regime
- d. to establish proper British protection

5.6.a The BNBC to acquire what remains of Brunei¹⁰⁸

Though aware of the limitations of his knowledge with regards to the BNBC, McArthur felt that this option could be discarded at the outset

¹⁰⁷ Ibid at paragraph 77

¹⁰⁸ Ibid at paragraphs 105 to 107

as though the BNBC would not be a cruel taskmaster, taxes in the territories already controlled by them were high and potentially oppressive for an already stretched Brunei. Furthermore, McArthur was not convinced at their ability to finance the administration of Brunei as Labuan, which was in BNBC control seemed neglected. Primarily however McArthur was concerned that given Brunei's history with Sarawak, it would be much harder to justify allowing the BNBC to take Brunei.

5.6.b. Absorption of Brunei by Sarawak¹⁰⁹

Having considered the advantages and disadvantages of the absorption of Brunei into Sarawak, McArthur seemed not to be in favour of this option.

The reasons against this can be set out in three broad-brush strokes:-

- i. Compensation

The Rajah's offer to buy out the rest of Brunei from the Sultan, Bendahara and Pemancha did not seem like a reasonable amount taking into consideration the amount of

¹⁰⁹ Ibid at paragraphs 108 to 133

revenue that could be obtained from the land, poll tax on the attached serfs and the potential future income that could be produced by those lands under a stable government.¹¹⁰

“Considering the advantages which would accrue to that Government from the absorption of Brunei and how easily the country can be amalgamated with existing districts, I am of the opinion that His Highness might well have offered higher terms, even as a business investment. I am, in fact, inclined to this that the present necessities of the rulers rather than the future prospects of the country have been the basis on which the price has been computed, and that many claims have been overlooked or disregarded”¹¹¹

ii. Loss of Dynasty

The main, if not only, inducement for Brunei to enter into the Treaty of 1888 with the British government was to save the country from the advances on it made by Sarawak. On the British side, the clauses that related to the protection of Brunei have not been met. Given the recent scars from the loss of Limbang and various other Sarawakian slights, it

¹¹⁰ Ibid at paragraphs 122 to 126

¹¹¹ Ibid at paragraph 128

would have been very unlikely that any offers by the Rajah would ever be welcome.¹¹²

“ But even if the terms were more generous I am convinced that their reply would be exactly the same. Their absolute refusal to discuss the terms seems to me to show that they are sometimes actuated by less ignoble sentiments than mere greed and avarice.”¹¹³

The loss of a dynasty if Brunei were to be absorbed into Sarawak would be regrettable considering that Brunei had been in existence for hundreds of years prior to this and also considering the lengths the Sultan had gone to ensure Brunei’s survival.

iii. Administration

Part of the Rajah’s claim on Brunei lay in the fact that he had developed a reputation as having great experience in the ruling of the Malay people. McArthur discovered in his time in Brunei that this in fact was not true. Brunei was made up of several large tribes. The Malay people, who formed the majority were one of those tribes. A large

¹¹² Ibid at paragraph 129

¹¹³ Ibid at paragraph 127

number of the Rajah's subjects and supporters were in fact members of various other minority indigenous tribes. He had in fact up till that point never had much to do with the governance of a Malay majority and was not in fact very well respected by the Malays. McArthur's discovery of this lay doubt on this part of the Rajah's claims.¹¹⁴

In favour of the absorption of Brunei into Sarawak, McArthur could only justify one valid reason. This reason being that such an action would relieve the British government of the responsibility of dealing with the negative reports about Brunei, and would do so at minimal expense.¹¹⁵

5.6.c. Supporting the Present Regime¹¹⁶

In a letter from Sultan Hashim to King Edward VII on 24th August 1902, the Sultan wrote:-

"From the day I set my hand to the Treaty of Protection (17 September 1888), I have not received assistance or protection from Your Majesty's Government and I beg, with all deference, for Your

¹¹⁴ Ibid at paragraph 117

¹¹⁵ Ibid at paragraph 130

¹¹⁶ Ibid at paragraph 104

Majesty's help. Not a single consul has done anything to help strengthen my country. They all seem to help Sarawak and to try to hand over my country to Sarawak."¹¹⁷

In his time in Brunei, though finding some of the practices of the nobles in Brunei appalling, McArthur found the above statement by the Sultan to be true and as such felt that to allow the status quo to continue would be simply to allow Brunei to die a slow death and all whilst under British protection.

"When it is remembered that these evils flourish under nominal British protection, and that it is that protection alone which keeps Brunei in existence as a separate state, it seems obligatory on His Majesty's Government to take some steps to ameliorate them, either by insisting on internal reform or by withdrawing all semblance of suzerainty, when Brunei would rapidly be absorbed, piecemeal, by its neighbours."¹¹⁸

5.6.d.. British Protection¹¹⁹

The form of British Protection as envisioned by McArthur was similar to the system of Residency that had been successfully implemented

¹¹⁷ CO 144/77 12955

¹¹⁸ FO 572/39, pp 4f-48 at paragraph 100.

¹¹⁹ Ibid at paragraphs 134 to 146

in the protected Malay states, under which the Sultan was advised by the British Resident on all matters other than those pertaining to tradition and religion. Whilst unsure if the Bruneian nobles had fully considered the advantages and disadvantages of being a British protectorate, McArthur was made aware by indications by various nobles that they would not find this arrangement unattractive provided that the governance of the country was carried out entirely in the name of the Sultan.¹²⁰ With this in mind and also being mindful of the outcomes of his investigations, McArthur opined that this was the option that had the most to offer¹²¹, though he was aware that there were issues of policy that would need to be dealt with to realize this option.

McArthur identified two problems with this option being firstly how to establish a base for the administration of Brunei and the second being the issue of the expenses that would be incurred. In relation to the first problem, he put forth the idea of reestablishing Labuan as a crown colony by taking it back from the BNBC¹²². He did not feel that the BNBC would be averse to this request by the British Government

¹²⁰ Ibid at paragraph 135

¹²¹ Ibid at paragraph 136

¹²² Labuan had become a crown colony in 1848 shortly after it was ceded from Brunei to the British. In 1888 when the British Government signed the 1888 protectorate treaty with Brunei, they also signed similar treaties with Sarawak and North Borneo. Under the 1888 treaty with North Borneo, the administration of North Borneo was left to the BNBC while foreign relations were in the hands of the British Government. In 1890 the British Government had placed the administration of Labuan in the hands of the BNBC.

as it seemed that the company was struggling with the upkeep of Labuan. Conversely, for Brunei, if Labuan were administered by the same people, the geography of the island in relation to Brunei town, Belait and Temburong would go some way to circumventing the problem of Limbang dividing Brunei into two parts. This was so because geographically Labuan provided a convenient stopping point between the two halves of Brunei.¹²³

On the issue of expenses, McArthur recommended: -

“It is no doubt true that all the possible revenues of Brunei have been recklessly anticipated and the proceeds spent. This has, of course, greatly reduced the present value of the country. It is also true that the original owners of the country, whether kerajaan, kuripan or tulin would have to be bought out before any process of reorganization could be commenced, and this would certainly require heavy initial expenditure. Similarly their various creditors and the financiers or money- lenders, who have acquired rights of taxation or the collection of revenue for years to come as security for loans advanced, would require some compensation, as also would the holders of trade monopolies.”¹²⁴

¹²³ FO 572/39, pp 4f-48 at paragraphs 137 to 142

¹²⁴ Ibid at paragraph 143

McArthur had correctly identified that the control of the country's purse strings would be the first step forward in restructuring the system of governance should British protection be opted for.

With the discussion of expenses McArthur ended his extremely comprehensive report on Brunei.

Whilst his recommendations were not accepted wholesale, we see in the next chapter that it was this report that established the residential system in Brunei and it is my opinion that it was this system also that sowed the seeds of the absolute monarchy that Brunei is today.

5.7. Conclusions

This chapter has considered briefly the idea of constitutionalism in South East Asia and taken us through the constitutional status quo in Malaysia and Singapore post British independence. In order to understand the current situation in Brunei, the chapter then outlines the positions of the various parties that played a significant role in bringing Brunei under British protection despite the ambivalence of the British Government towards Brunei in the 19th century. It details the relevant treaties signed between Brunei and the British government. It also highlights, through the explanation of the losses of Labuan and Limbang, the insecure position of the Sultan and his

lack of power to effectively ensure the survival of Brunei without outside help. The McArthur report was discussed in great detail, which painted a comprehensive picture of the deficiencies in the traditional method of governance. It is my belief that it was the inadequacies found in these areas that led to monumental reforms to Brunei governance under the British Resident. The McArthur report was indeed the catalyst for the residency in Brunei and it was these reforms that paved the way for how large parts of Brunei Government structure operate today.

Chapter Two

1. Introduction

The period immediately following the establishment of the British Residency in Brunei was a time of great change. Not only were new systems being set up to enhance the administration of the country, but also, this was when oil was discovered. This chapter will address the fundamental changes to the Brunei Administration that were wrought by the British Resident from the beginning of the Residency in 1906 to 1946, the end of the Second World War.

As has been set out in the introduction to this thesis and also in Chapter One, the aim of this thesis is to explain why Brunei uniquely developed into an absolute monarchy in the years after the British left. It is my contention that part of the reason for the current absolute monarchy is the restructuring of traditional Bruneian governance by the British. Prior to the coming of the British, as we saw in Chapter One, the Sultan, while revered by his people, had very little actual power. In this chapter we will see how the restructure of government in Brunei channeled unbridled power into the office of the British Resident while giving the Sultan a veneer of power in the process.

I will start by discussing Brunei's legal status in the eyes of the British government. Understanding Britain's relationship with Brunei helps us to understand what powers the British Resident had in implementing changes to systems of government in Brunei. This will include a discussion of the Supplementary treaty of 1905/ 1906 as it was the instrument by which the residential system was installed. I will then summarise the various reforms to the traditional systems of government that were carried out by the Resident. Understanding these reforms allows us to chart Brunei's progression from the traditional methods of governance discussed in Chapter One to the way modern Brunei is governed. These reforms are significant because modern Brunei has built on these early reforms to get to where it is today.

I will then briefly consider the impact of the discovery of oil in 1929 and consider the effects of the British Government's choice not to spend the resultant wealth.

This will be followed by a look at the Brunei administration during the Japanese Occupation of Brunei from 1941 to 1945. A look at the brief Japanese spell in Brunei's history is relevant to this paper as it helps to provide the context for the rise of nationalism in Brunei after the Second World War.

I conclude the chapter with a discussion of the British Military Administration that bridged the gap in Bruneian governance between Brunei's liberation from the Japanese in 1945 and the return of the British Resident to Brunei in 1946. It is necessary to touch on this period to enable us to understand the changes to British policy with regards to Brunei in the aftermath of the Second World War.

2. Supplementary Treaty 1905/1906

The British Residency in Brunei was officially established by the signing of the Supplementary Treaty of 31st December 1905 and 2nd January 1906 (hereinafter referred to as 'the Supplementary Treaty'). Interestingly, The Supplementary Treaty contained only one substantial clause, which states as follows: -

“ i. His Highness will receive a British Officer, to be styled Resident, and will provide a suitable residence for him. The Resident will be the Agent and Representative of his Britannic Majesty's Government and his advice must be taken and acted upon on all questions in Brunei, other than those affecting the Mohammedan religion, in order that a similar system may be established to that existing in other Malay States now under British Protection.”

I believe there are two reasons for the brevity of the Supplementary Treaty. The first reason being that the Supplementary Treaty was

made to be read in tandem with the Protectorate Agreement of 17th September 1888 (hereinafter referred to as 'the Protectorate Agreement') between Brunei and the British Government.

The significant clauses in the Protectorate Agreement have been discussed in detail in Chapter One previously.

The second reason for the brevity of the Supplementary Treaty is because that single clause was sufficient to confer immense power over Brunei by the British Government through the conduit of the Resident.

The Supplementary Treaty marked the transition from the post of British Consul to that of a British Resident. Perhaps the change in the title of the highest ranking British representative in Brunei was to mark the change in jurisdiction of the British representative; as Brunei surrendered control over most of her internal administration to the British¹ the powers of the British representative on site would also be significantly altered and expanded.

3. Legal Status

¹ Article I Supplementary Agreement between Great Britain and Brunei 3rd December 1905 & 2nd January 1906

It is important to note that both the Protectorate Agreement and the Supplementary Treaty use the term “British protection”. This choice of wording on the agreements I believe is an indicator of Brunei’s legal status in the eyes of the British Government.

Mandy Banton opines that the term “colony” is used as an umbrella term for all territories dependent upon the British Empire. She goes on to state that there were technically four different types of dependency: colonies, dominions, mandated territories and protectorates.²

I shall now go on to consider each of these different types of dependencies in turn with the intention of determining which type Brunei would have come under. It is stressed at this point however that the following discussion is kept brief as in depth examinations of the different types of dependency is beyond the scope of this thesis.

3.1 Colonies

Sir Charles Jeffries, a deputy under secretary of state, was of the view that “A Colony, in modern constitutional definition, is a territory which by settlement, conquest, cession or annexation has become a

² Mandy Banton, *Administering thru Empire 1801- 1968: A Guide to the Records of the Colonial Office in the National Archives of the UK*, Institute of Historical Research and the National Archives, 2008 at page 11.

part of Her Majesty's dominions and over which Her Majesty, as Queen of the United Kingdom, exercises absolute sovereignty"³

The Colonial Office List of 1878 classified colonies into three categories:

- i. "Crown Colonies, in which the Crown has the entire control of legislation, while the administration is carried on by public officers under the control of the Home Government
- ii. Colonies possessing Representative Institutions but not Responsible Government, in which the Crown has no more than a veto on legislation, but the Home Government retains the control of public officers.
- iii. Colonies possessing Representative Institutions and Responsible Government, in which the Crown has only a veto on legislation, and the Home Government has no control over any public officer except the Governor"⁴

At the time of the signing of the Supplementary Treaty Brunei was governed by almost a feudal system of government as described previously in Chapter 1 of this thesis. Brunei therefore did not have "Representative Institutions" as mentioned in two of the three

³ Charles J. Jeffries, *The Colonial Office*, Allen & Unwin, 1956 at page 29

⁴ Quoted in the secondary from Mandy Banton, *Supra* from footnote 2 at page 11

categories in the Colonial Office List. Further it is made clear by the sole clause in the Supplementary Treaty, which was discussed earlier in this chapter, that the Sultan of Brunei was obliged to listen to the advice of the Resident in most matters. This implies a retention of sovereignty in some aspects of internal rule. As we shall see later in this thesis, though the resident legislated, all legislation was passed in the name of the Sultan. It is for these reasons that Brunei cannot be classified as a British colony.

3.2. Dominions

Mandy Barton observed, "From the early 20th century 'dominion' was increasingly used for dependencies possessing responsible government"⁵. She goes on to detail the move towards being essentially self-governing in certain British settlements and the demands from these colonies for a different relationship with the British Government. This led to the establishment of the Dominions Office and the Balfour Declaration of 1926 which defined a Dominion as "autonomous Communities within the British Empire, equal in status, in no way subordinate to one another in any respect of their domestic or external affairs, though united by a common allegiance

⁵ Barton, *Supra* from footnote 2 at page 12

to the Crown, and freely associated as members of the British Commonwealth of Nations”⁶

The very fact that Brunei was subordinate to the Crown for external affairs precludes her from being a Dominion by these definitions.

3.3. Mandated Territories

Of the four types of dependency, this was the one most clearly defined. Barton states, “the mandated territories were former dependencies of Germany and the Ottoman Empire entrusted to Britain by the League of Nations following the First World War”⁷

Brunei, never having had any associations with Germany or the Ottoman Empire, was clearly not a Mandated Territory.

3.4. Protectorates

Defined by the Colonial Office in a report prepared by J. J. Paskin as follows: -

“A British Protectorate is not part of His Majesty’s dominions. The native inhabitants are not, by reason of birth there, British subjects

⁶ Ibid

⁷ Barton, Supra from footnote 2 at page 15

but are under His Majesty's protection, and are generally known as British Protected Persons....

States in which there is a recognized Sovereign Ruler, by which, being under His Majesty's protection, have no political relations with Foreign Powers except through or by permission of His Majesty's Government. These states are usually referred to as "Protected States". They may be roughly classified as follows: -

a) States in which His Majesty does not possess jurisdiction (e.g. the various Malay States and Sarawak). In certain of these States, although de jure, His Majesty may have no control over the internal affairs of the State, such control is de facto exercised through the medium of British Residents or Advisers."⁸

Despite not being mentioned specifically, Brunei would fall within the same category as the Malay States of Malaysia and Sarawak. It was in fact on the model of the Residential System found in the Malay states that the system in Brunei was based, as previously mentioned in Chapter One when discussing McArthur's recommendations for Brunei.

Based on the concept of "indirect rule", the idea of the protectorate did not go so far as an annexation and often entailed minimal administrative cost to the British Government⁹. "Indirect rule" was described by Burrows as being "limited liabilities and minimal

⁸ CO 323/1105/6, file 71376, 1930

⁹ Andrew Porter, *The Oxford History of the British Empire- Volume III- The Nineteenth Century*, Oxford University Press (1999) at page 190.

management based on accommodation more than compulsion, on collaboration more than confrontation”¹⁰.

The main problem with the idea of the protectorate was that the jurisdiction and responsibilities of the protecting state towards the protected state and vice versa, were ill defined¹¹. Sir John Bramston, an officer with the Colonial office described the responsibility of a protecting state as “... carried with it a right on the part of the protecting Power to exercise within that country such authority and jurisdiction- in short, such of the attributes of sovereignty- as are required for the due discharge of the duties of a Protector, for the purpose not only of protecting the Natives from the subjects of civilized Powers, and such subjects from the Natives and from each other, but also for protecting the Natives from the grosser forms of ill-treatment and oppression by their rulers, and from raids of slave dealers and marauders”¹²

It was observed by Newbury¹³ that “By the 1890s, without the formality of annexation, the British authorities and local agents were freely establishing in Protectorates rudimentary frameworks of

¹⁰ Ibid at page 196

¹¹ Ibid at page 191

¹² CO 879/43, Bramston to Cardew, 16th October 1895, No. 497 at pages 51- 52

¹³ Colin Newbury, “Treaty, Grant, Usage and Sufferance: The Origins of British Colonial Protectorates”, in G.A. Wood and P.S. O’Conner, eds., W.P. Morrell: A Tribute (Dunedin. 1973). Pages 69- 84

government involving courts, taxation, military ‘pacification’, displacement of indigenous rulers, and the issue of certificates of land titles which paved the way for Crown land rights and appropriation by European settlers”¹⁴

Practically, the administration of a protectorate differed very little from that of a Crown Colony, the only difference perhaps being that in a Crown Colony the Queen was recognized as Head of State whereas in a protectorate, even if nominally, the ruler of the protectorate was still deemed head of state. In the absence of a definitive official definition of what a protectorate is we are forced to summarize from the observations of various scholars and officials. The consensus seems to be that the protectorate is a state whereby, though the Queen does not technically have jurisdiction, there is a form of indirect rule in place whereby the protecting state possesses much power as is necessary to protect the interests of the protectorate both from internal and external influences. Indeed this seems to be the line that was taken in Brunei as we shall see throughout the course of this chapter.

4. The Office of the British Resident

¹⁴ Porter, *The Oxford History of the British Empire*, Supra from footnote 8 at page 195.

Barton suggested that though titles varied throughout the various British dependencies, ranging from Governor to Captain- General or Resident or even adviser, the function was the same in that this person would be the head of each individual protectorate¹⁵. There is no definitive list, document or statement as to what the exact functions and duties of the British Resident (as he was styled in Brunei) were. The aforementioned clause in the Supplementary agreement, while setting out the ambit of the Resident did not provide any further guidance as to what exactly needed to be done and how exactly those things would be achieved.

According to Sadka “The plan to establish Residents in the Malay states was necessarily vague and ill- formulated; it suggested, without defining, the role of the Resident- as protector of British subjects and foreigners engaged in trade; as the medium of communication between the native states and the outer world, and as a progressive influence on government organization and policy”¹⁶

Despite this ambiguity as to function, duty and form there was no dispute as to the importance of the position. This is succinctly summarized by Barton when she says “The governor was head of state; the representative of the British monarch. Technically he was

¹⁵ Barton, *Supra* from footnote 2 at page 15

¹⁶ Emily Sadka, *The Protected Malay States 1874- 1895*, University of Malaya Press, 1968 at page 49.

also responsible to the reigning monarch, although in practice reporting to the secretary of state. He exercised virtually all the constitutional functions of the Crown within his territory, and was described by Lugard as combining the functions of king and prime minister”¹⁷

Perhaps it was due to the importance of the role that the position was left so ill defined, so as to allow the Resident the greatest maneuverability in the carrying out of his duties. As will be seen later in this chapter however, it was this vagueness, particularly on the issue of where the Resident derived his authority from, that further inflamed the, by then, strained relationship between the Sultan and the Resident.

The first example of the use of a Residential system of government, in a Malay state with its own traditional rules as to governance, was found in Perak. Perak is now a state of modern day Malaysia. A Resident was put in place with the signing of the Pangkor Engagement in 1874 between the British and Perak. At this time, Perak was a small independent Malay state in its own right. Under the terms of the Pangkor Engagement, the Raja of Perak agreed to accept the advice of the newly appointed British Resident on all

¹⁷ Banton, *Supra* from footnote 2 at page 16 where she also summarises the work of Sir F.D. Lugard, *The Dual Mandate in British Tropical Africa*, Edinburgh and London, 1926 at page 95

matters except Malay religion and custom. The Residential system was shortly thereafter adopted by the majority of the states in what is now modern peninsular Malaysia.¹⁸

Indirect rule being such a fluid concept, outcomes differ for a number of different reasons. Firstly because of how the protecting power views the concept of indirect rule. Secondly, much also depends on the systems of government already in place in the country and finally, the nature of the individual Resident also plays a part. In the case of Malaya the deciding factor as to how much the role of Resident would encompass was the assessment of the Resident as to the capability of the Malay Raja to rule and of his people to participate in governance. On this, the first Resident of Perak said “my experience as an Executive and Judicial Officer for the last twenty- seven years among an Eastern people has taught me that they are perfectly incapable of good government, or even of maintaining order, without guidance or assistance from some stronger hand than is ever to be found amongst themselves”¹⁹. This perceived incompetence allowed the Resident more power to instigate great changes in a more direct

¹⁸ Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis*, Hart Publishing (2012) at page 16

¹⁹ Emily Sadka, *Supra* from footnote 15 at page 53

manner justified by the principle that indirect rule aims “to preserve order, to do justice and prevent oppression”²⁰

At this juncture, one might question how the views of the Resident could be so instrumental in how the protectorate was run. This is explained by Sir Charles Jeffries in his comments on the relationship between the Secretary of State and the Governor, in saying “The Secretary of State does not function in a vacuum... he necessarily relies mainly upon the Governor to lay before him all the necessary information and considerations which affect... to overrule the considered and maintained advice of a Governor is a thing which no Secretary of State would do lightly...”²¹

The office of British Resident as was installed in Brunei by the Supplementary treaty was one that had the benefit of the British experience in Malaya. As seen in Chapter One when discussing the recommendations by McArthur for Brunei, it was in fact this British experience with the Residential system in the Malay states that led to this system being considered. Armed with this experience, the British made two notable differences between the Pangkor Engagement of Perak (which put the residential system in place in Malaya) and the Supplementary Treaty of Brunei. The first difference was the

²⁰ Clarke of the Colonial Office to Birch the first Resident of Perak, quoted in the secondary from Emily Sadka, supra from footnote 15 at page 62

²¹ Sir Charles Jeffries, *The Colonial Office*, London (1956) at page 36.

translation of the word “advice”. The Malay version of the Pangkor Engagement uses the word “*berbicara*” which means “to discuss”, there is no implication in this word that advice given to the Raja need to be taken. The Supplementary agreement on the other hand uses the proper translation for the word “advice” which is “*nasihat*” that carries with it the implication that the giver of the advice, i.e. in this case the Resident is a superior with more knowledge than the Sultan and therefore the advice or “*nasihat*” should be heeded.

The second difference between the Pangkor Engagement and the Supplementary treaty is the clause pertaining to Malay customs and traditions. While the Resident in Malaya was restricted from giving advice on matters of Malay Custom and tradition as well as matters pertaining to the Islamic religion, the Resident in Brunei was only instructed to avoid Islamic religious matters. Perhaps the limitation on the Resident not to give advice on matters relating to religion or Malay custom meant more to the Rajas of Malaysia than to the Resident. Given the traditional system of government that the Rajas was used to, it would not be unthinkable for the Rajas to believe that their role was less restricted due to the fact that most aspects of traditional governance were arguably based on Malay customs or religion.²² To avoid experiencing similar difficulties with the Sultan of

²² Andrew Harding, *Supra* from footnote 17 at page 18

Brunei on this clause to those they had had with the Rajas of Malaysia, the limitation on traditional customs was omitted.

5. Reforms under the Resident

It was no exaggeration to say that the first Residents saw their task in Brunei as the proverbial 'cleansing of the Augean stables'²³ because, in the eyes of the British, to quote from the MacArthur Report there was "no Government in the usual sense of the term"²⁴. "Pre-Residential Brunei had no salaried officials, no public institutions, no police, no coinage, no roads, no public buildings (except a wooden mosque) and only the semblance of a judicature"²⁵ and the Residents saw it as their duty to establish a modern system of administration recognisable to the British.

The major changes introduced by the Residential system can be grouped under the following headings: -

- i. Financial Restructuring
- ii. Political changes
- iii. Economic Development

²³ CO 531/2 Correspondence between H Chevalier to Sir J Anderson (Item 28323) 26th July 1910

²⁴ McArthur Report, FO 572/39 at paragraph 8

²⁵ A. V.M. Horton, A Dying Kingdom Reprieved, Brunei Museum Journal, Volume 6. No. 4 (1988) at page 9.

iv. Changes in Administration

I will discuss each in turn, giving a brief summary of the work done by the resident in each sector and highlighting the most important change within each section.

5.1. Financial Restructuring

One of the first matters for reform was to create a national revenue stream for Brunei. The traditional method of governance and the traditional rules surrounding land ownership as already explained in Chapter One previously made it impossible to distinguish between revenue collected by the nobles in their personal capacity from revenue collected in their official capacity. Hence there was no centralized fund from which the administration could draw for the day-to-day expenses of the country.

Instrumental to creating a revenue stream for the country were the changes to land rights that were implemented by the Residency. The introduction of the Land Enactment in 1907 changed the traditional system of land ownership in its entirety²⁶. *Kerajaan* (Crown Lands) and *Kuripan* (Ministerial lands) lands were taken into state ownership

²⁶ AVM Horton, *The British Residency in Brunei 1906- 1959*, The University of Hull Centre for Southeast Asian Studies, Occasional Paper No. 6 (1984)

in exchange for a pension given to the initial owners of the land. The *Tulin* (private domains) lands were the sticking point in the land reforms as with no written records, it was particularly difficult to determine the authenticity of the claims. Eventually however the genuine claims to the land rights were established and compensation was also paid to the owners of the Tulin land rights.

As most of the land in Brunei was now state owned, the state also controlled all the administrative and taxation rights over that land and could use those rights to generate state revenue.

Another financial coup of the early Residents was the state acquisition of trade 'monopolies'. As succinctly described by AVM Horton²⁷ "A 'monopoly' was an item of 'government' revenue which had been alienated to a farmer, usually for several years in advance, in return for a cash payment". Under the residential system, all these alienated rights²⁸ to revenue were cancelled and compensation was paid to the owners of these monopolies. Future revenue from these monopolies was in this way secured for the central fund.

Brunei however would not have been able to offer compensation to any of the landowners or monopoly owners without obtaining a

²⁷ Ibid at page 14

²⁸ Alienated rights to revenue here meaning legally transferred rights of ownership to the revenue

substantial loan from the Federated Malay States. It was the Resident who realized such action was necessary and made arrangements for this loan to be granted to Brunei.

Systems to manage the central fund were also set up in the form of a State Treasury and a formal and centralized system of tax and revenue collection²⁹.

5.2. Political changes

A very subtle political change brought by the Resident was the bolstering of the Sultan's position over that of his "*Wazirs*" or Viziers³⁰. Due to the traditional system of land administration (that was overhauled by the Resident) the Viziers effectively ruled over their own lands without the need to consult the Sultan for any of the laws they deemed necessary to enforce on their lands. When land administration was centralized by the Resident, the Viziers lost most of their lands to the government and as such lost most of their political power. Further, as an indirect system of rule (as outlined earlier in this chapter) was employed by the British, the Resident astutely established legitimacy to his changes by passing them in the name of the Sultan. This simultaneously bolstered the relationship of the Resident with the Sultan and also enhanced the authority of the

²⁹ Ibid

³⁰ Ibid

Sultan over his Viziers, which in turn enhanced the power of the Resident. This same method had been employed successfully by the British in Malaya³¹. In the beginning of the Residency, the effect of this reform was not obvious however it was this change that would aid a later Sultan in asserting his position as Sovereign ruler of Brunei because, while the function or substance of the power rested with the Resident, to the general populace, the form of the power lay in the person of the Sultan.

The more obvious political change was the guarantee of the dynastic succession of rulers in Brunei³². As discussed in the last chapter, though the Sultan was technically succeeded by his first son, this rule of succession proved to be a rather fluid one. Should another noble have proven to be more popular than the heir apparent there was every possibility that he would be Sultan instead. Under the 1888 Agreement, the British reserved the right to settle issues of succession. This backing by the British of the rules of primogeniture ensured that the dynastic line of the Sultan was carried on. This line of succession remains unbroken to the present Sultan.

³¹ Emily Sadka, *Supra* from footnote 15 at page 17

³² AVM Horton, *The British Residency in Brunei 1906- 1959*, The University of Hull Centre for Southeast Asian Studies, Occasional Paper No. 6 (1984)

5.3. Economic Development³³

The transfer of monopoly rights to the state allowed for a greater ease and freedom of trade. This, coupled with the greater political stability in the country due to the Residency, also encouraged foreign capital investment into the state.

The Resident encouraged the new enterprises such as oil exploration and ventures into the timber and rubber industries. At the same time the Resident tried to provide incentives for the people who lived in huts on Brunei Bay, who were traditionally fishermen, to abandon their village on the water and come ashore to provide manpower for the more established coal and catch³⁴ factories and to farm the fertile soil. While the Resident did manage to increase Brunei's revenue through these industries, Brunei was by no means wealthy. The isolation of Brunei and lack of labour meant that there was nothing that was produced in Brunei that could not be produced more cheaply and in greater quantities in neighbouring states.

³³ Whole subsection summarized from AVM Horton, *The British Residency in Brunei 1906- 1959*, The University of Hull Centre for Southeast Asian Studies, Occasional Paper No. 6 (1984)

³⁴ Also called Catechu, catch is an extract from a species of Acacia tree.

5.4. Changes in Administration³⁵

Administrative reform by the Resident centered on setting up the basic state infrastructure. The Resident divided Brunei into four administrative districts (which remain until the present day), created a system of courts, oversaw the institution of a police force and the building of the first prison.

The change to have the greatest impact to the administration was however the adaptation of the traditional body of consultants to the Sultan into a formal State Council, which was to operate primarily as a law making body. An examination of the State Council follows.

6. The State Council

Prior to the establishment of the Residency system in Brunei, traditionally the Sultan had to consult with his Wazirs in any decision or law making. Though ill defined in both theory and practice, there existed already in Brunei the idea that state decisions should be based on more than just the will of the Sultan³⁶. This custom of consultation with the Wazirs in decision-making was a very rough

³⁵ Whole subsection summarized from AVM Horton, *The British Residency in Brunei 1906- 1959*, The University of Hull Centre for Southeast Asian Studies, Occasional Paper No. 6 (1984)

³⁶ D.E. Brown, 'Socio- Political History of Brunei, A Bornean Malay Sultanate', Cornell University 1969 at page 267,

and ready version of what became the State Council, the flaw with the consultation custom being that none of the nobles had the power to make and enforce decisions, as none of them were supreme above the others.

The “Salasilah Raja Raja Brunei”³⁷, one of the oldest written records of Bruneian customary law as previously mentioned in Chapter One, mentions a daily gathering of officials at the residence of the Sultan. It also mentions that the Sultan required the concurrence of his subordinates in making the larger decisions that would affect the country. This same observation was noted by a British observer in Brunei in the 19th century “Neither in theory nor practice is the Sultan despotic: he must consult on all great occasions with his chief officers, and all important documents should bear at least two of their seals”³⁸. While these two sources make mention of an informal meeting of officials, they however do not go into detail as to who the officials were.

The major differences between the traditional consultations with the Sultan and the State Council were twofold. Firstly, the presence of a powerful foreign advisor significantly altered the dynamics of State

³⁷ “Silsilah Raja Raja Berunai”, ed Amin Sweeney, *Journal of the Malaysian Branch of the Royal Asiatic Society (JMBRAS)* 31, 2 (1968), 35- 37

³⁸ Quoted in the secondary from D.E. Brown, *Brunei: The structure and History of a Bornean Malay Sultanate*, Bandar Seri Begawan: Brunei Museum Journal Monograph No. 2 1970 at page 94.

Council. Traditionally a leading local official guided the consultations with the Sultan at the helm. Under the residency, the power to call a session, the agenda and the conduct of the session was in the sole hands of the Resident. It would not be unfair to see this change as unrepresentative. The loss of power by a local member of the people to lead his people in discussions to a foreign advisor, and the very presence of a foreign advisor, that curtails frank discussion of local issues, goes against the very essence representation by the people for the people. While giving the illusion of moving forward by having a formally constituted body for consultation, it is arguable that in this aspect the State Council was actually a step back.

The second major difference was the fact that the State Council as set up by the Residential system, went far beyond the simple principle of consultation. As we shall go on to see, the State Council eventually went on to have executive, judicial and legislative functions. As Sadka states of a State Council in Malaya, so it is the same with the State Council of Brunei "The Council was first conceived as an advisory body, but from the beginning it fulfilled other functions. It was the sole legislating body; legislation took the form of Orders or Regulations passed by 'the Sultan in Council'. It was the final court of appeal; death sentences required its ratification and the Sultan's warrant before they could be carried out, since the power of life and death, according to Malay theory, was a royal

prerogative. The Council was the chief executive body: changes in the tariff structure, Malay pensions and appointments, the jurisdiction and discipline of headmen and all other matters pertaining to local government, the appointment of kathis and the administration of Muslim personal law, were all dealt with by resolutions in Council”³⁹.

Though the Sultan possessed very little actual power, the hierarchically structured society of Brunei meant that there was still a large amount of respect that came with the title of Sultan and the people still looked to the Sultan as their leader. As they had done in the Federated Malay States⁴⁰, the British did very little to interfere with this respect for the Sultan and chose instead to enhance it⁴¹. This enhancement of the Sultan’s status was achieved by funneling all the reforms made by the Resident through the Sultan.

Perhaps the most important reform by the British Resident that had the added effect of elevating the status of the Sultan over the Wazirs, as discussed previously in this chapter, was the restructuring of the system of land ownership. The Wazirs and the Sultan were no longer all- powerful in their own districts, land administration was centralized and the rights over the land were given to the government. However,

³⁹ Emily Sadka, *Supra* from footnote 15 at pages 184 to 185

⁴⁰ British Malaya (November 1945): Sir F Swettenham: “Administration in the Malay States” at page 222

⁴¹ CO 531/11 G E Cator to HC, conf. 2, paragraphs 5 to 7 (item 50598) 30th April 1917

as all these reforms were done by the Resident in the name of the Sultan, it followed naturally that the status of the Sultan was elevated because he was the head of the government. The Resident 's choice of enacting legislation via Sultan- in- Council also went a long way towards bolstering the Sultan's position over and above that of the other nobles. This choice by the Resident to indirectly rule using the Sultan as a conduit, was the first step in solidifying Brunei as the absolute monarchy we know it to be today.

There was no documentation setting out the ambit of the State Council and it was this ambiguity that was exploited by the British Resident. In the words of B.A. Hussainmiya "The actual functions of the State Council had never been spelled out, and it proved to be a convenient instrument to 'manufacture consensus' among the ruling elite for major decisions pertaining to the running of the State. It was the Resident who fixed the agenda and he has coercive powers that allowed him to push through legislation in accordance with the desires of the Imperial authorities"⁴². In theory the State Council passed legislation, however in practice it was all the work of the Resident.

⁴² B.A Hussainmiya, "Manufacturing Consensus: The Role of the State Council in Brunei Darussalam", *Journal of Southeast Asian Studies*, Vol. 31, No. 2 (Sep 2000) pg 321- 350 at page 325

Essentially everything the British Resident did was given legitimacy due to the fact that everything he did, he did under the name of the Sultan. All decisions taken by the State Council were officially noted as being the decision of the “Sultan- in Council” with or without the presence of the Sultan at the council meeting. All official documentation came from the office of the Resident and bore the Sultan’s seal as the Sultan’s only role in this was to ratify the decisions of the Resident⁴³.

If the intention was to divest the Sultan of his traditional law making capacity, then the State Council was superficially a step in the right direction. The way the resident functioned within the State Council however meant that the law making capacity was now invested in practice in the office of the Resident.

It is fair to say that at the beginning, the State Council was little more than a method by which the Resident informed the Sultan and other officials of his plans for the country. “*Administration was completely in the hands of the British Resident, and the State Council ‘a rubber stamp’*”⁴⁴. The general attitude of the Resident towards these meetings was recorded in the Brunei Annual Report of 1909 when the Resident reported that the meetings were “rarely necessary or

⁴³ Ibid

⁴⁴ CO 1030/1038- Report by D.C. White (British Resident) to Lord Landsdowne (Colonial Office), 15th August 1962.

advisable in the present state of Brunei. Their old age precludes the presence of the Pengirans Bendahara and Pemancha and the attitude of the other leading nobles shows that as yet they are incapable of forming any opinion for themselves discussion of which might tend to the benefit of the country”⁴⁵.

Due to the ambiguous ambit of the State Council, and the fact that it exercised legislative, executive and judicial functions, by constitutional doctrine it would be difficult to pigeonhole the State Council into any of the three traditional branches of power. It is interesting that in restructuring the administration of Brunei, the British Resident chose a form of administration that did not encourage a separation of powers and indeed it is arguable that this method of administration, put in place by the British, placed the Sultan in a position contrary to the rule of law.

What is certain however is that in all of the three roles, the State Council was no more than a puppet⁴⁶. There are perhaps three reasons for this. The first of these reasons was that at the start of the State Council, Brunei was a kingdom that had just been saved from extinction. The country was virtually bankrupt and it was the job of the Resident to help make the state viable again. With such an imbalance of power it would have been difficult for the Resident to

⁴⁵ CO 824/1 Brunei Annual Report 1909 at page 6

⁴⁶ See footnote 44

take the State Council seriously and also for the members of the State Council to feel like they had a right to contribute.

Secondly the members of the State Council, whilst traditionally held in high regard by the Bruneian people due to their position in social class hierarchy of Brunei, were not viewed with the same regard by the Residents. They were mostly viewed as lacking in education, intelligence and drive and therefore would have been unable to participate in any meaningful manner should State Council discussions have taken place. While this may have been true for some members, the situation was also perhaps aggravated by the fact that the early Residents to Brunei were normally more junior officers who lacked the experience to understand the language, customs and traditions of Brunei.

Finally, and perhaps most importantly, the first two Sultans during the Residency ascended the throne as minors. Receiving no formal education and relying almost entirely on the advice of their regents, it could reasonably be argued that they were not properly equipped to effectively utilize the State Council as a method of exercising legislative and executive power.

The first meeting of the State Council took place in 29th June 1907. This council was made up of ten members, which included the British

Resident and the Sultan⁴⁷. The composition of this council was determined by existing customs and traditions and therefore, other than the Sultan and the British Resident, was made up of two Wazirs, two Chetrias and three Menteris. In short, the State Council consisted of members of the nobility of Brunei. One of the first orders of business was to establish the composition of the State Council. As this was a reconstitution of an existing traditional body of consultants, one of the viziers was asked to provide a list of which officials should be made members⁴⁸. In the traditional consultations there were no definitive rules⁴⁹ for who had a right to attend and so the composition of the State Council varied considerably at each meeting.⁵⁰ Similar to the lack of rules for determining the composition, there were also no rules for the tenure of the members. It was understood that the prestigious appointment of a place on the State Council was until death or resignation.⁵¹ Similar to the practice in the Malay states, and like most matters in traditional Malay governance, all these matters were decided by custom and traditional practice as opposed to formal rules⁵². In an attempt to formalize the State Council, it was agreed that the Sultan would nominate members after consultation with the Resident and High Commissioner of Malaya. It was also

⁴⁷ BA/FC/RBM/57, Minutes of State Council Meeting from 29th June 1907 to 31st August 1949

⁴⁸ Ibid

⁴⁹ Ibid, State Council Meeting Minutes of December 1925

⁵⁰ B.A. Hussainmiya, *Supra* from footnote 42, Table 3

⁵¹ B.A. Hussainmiya, *Supra* from footnote 42 at page 328

⁵² Emily Sadka, *The Protected Malay States, 1874- 1895* (Kuala Lumpur: University of Malaya Press, 1968) at page 184

agreed that removal of members would be done in a similar fashion⁵³.

It was under the State Council that written laws in Brunei came into existence. As summed up by the Resident in the Brunei Annual Report of 1908 “The consideration of proposed laws by His Highness in Council is an innovation in a State where formally the Sultan and chiefs were laws unto themselves”⁵⁴. Legislation was drafted by the Resident’s office and then passed on to the office of the High Commissioner in Malaya for approval. Once approved, the legislation was sent to the State Council for assent. The requirement of the approval of the High Commissioner clearly indicates that the authority of the High Commissioner and therefore the Secretary of State for the Colonies superseded the authority of the State Council.⁵⁵

7. The Discovery of Oil 1929 and its impact

⁵³ BA/FC/RBM/57, Minutes of State Council Meeting from 29th June 1907 to 31st August 1949

⁵⁴ CO 824/1, Brunei Annual Report 1908 at page 7

⁵⁵ B.A. Hussainmiya, *Supra* from footnote 42 at page 329

On 5th April 1929 oil was struck in Brunei⁵⁶ and it cannot be overstated how much its discovery has impacted Bruneian fortunes. While the economic effect of this discovery is obvious, its effect on the State Council is much less so. The start of the discontent within the members of the State Council with regards to the governance of Brunei directly correlated with the discovery of oil and how the British administration chose to use or not use that oil wealth.

The newfound wealth from this discovery did not make the impact it could have had in 1930's Brunei. The Resident paid off the Brunei National debt quickly but continued to exercise extreme caution in his financial policy as the extent to which oil could be relied on as a source of consistent income was yet to be determined⁵⁷.

To this end, a very cautious approach was taken to the improvement of social services and modernization of the administration. The declared policy of the Government was "to exploit the oil resources of the State for the benefit of the people of the State and to use the revenues derived there from for the establishment of a settled system of agriculture, the enlargement of education, the expansion of social and health services and the raising of the standard of living

⁵⁶ Pehin Jawatan Dalam Seri Maharaja Dato Seri Utama Dr. Haji Awang Mohd. Jamil Al- Sufri, *History of Brunei in Brief* (Brunei History Centre, Ministry of Culture Youth and Sports, 2000)

⁵⁷ CO 824/2 Brunei Annual Report 1938

generally”⁵⁸. In line with this policy, a few more schools were set up, a State Medical Officer was appointed and the first Government hospital was built. Transport links were improved between the districts with the building of a few roads. Departments were set up for medicine, forestry and agriculture as well as Sanitary Boards for three districts⁵⁹.

Though this sounds like improvement in leaps and bounds, and it was indeed that, it was still proportionately much less than what Brunei could have afforded with the new oil wealth. Most notably, oil revenue was not spent on educating the populace beyond the level of primary school despite that fact that it was a recognized problem that it was a struggle to find anyone literate to be a teacher⁶⁰. An examination of the financial reports for Brunei between the years 1930 and 1938 showed a surplus of revenue that rose from six percent in 1930 to thirty- nine percent in 1938. The same financial reports also show that despite the large increase in surplus revenue there was no proportionate increase in the amount spent on education, that amount largely holding steady at two percent of yearly revenue between 1930 and 1939.⁶¹

⁵⁸ CO 824/2 Brunei Annual Report 1938 at page 54

⁵⁹ Ibid

⁶⁰ CO 824/1 Brunei Annual Report 1911 at page 10

⁶¹ CO 824/2, Brunei Annual Reports 1930 to 1939.

With the growing business of the government due to the finding of oil, matters that were brought to the State Council increased in both volume and complexity. This was so because the State Council continued to sign off on laws, orders and regulations required to manage the new wealth⁶². Despite the growing wealth of the nation however, the British Resident still kept a very tight hold of the nation's purse strings. This reluctance of the Resident to release funds to the nation and the royal family not only kick started feelings of discontent in the members of the State Council but it also placed a particular strain on the relationship between Sultan Ahmad Tajuddin and the Resident⁶³. As a form of protest at the Resident's treatment the Sultan became indifferent to the State Council and chose not to attend the meetings henceforth. When he did attend meetings, he tried to curtail the work of the Resident and also incited other members of the State Council to do the same.⁶⁴ Emboldened by the actions of the Sultan and their feelings of discontent, local members of the State Council started to take an interest in the State Council meetings⁶⁵. The question of the legitimacy of legislation enacted by Sultan- in- Council, when the Sultan was not in fact in council, was not raised at this point and did not in fact come to light until after the Second World War. Though the relationship between the Resident

⁶² B.A. Hussainmiya, Supra from footnote 42

⁶³ Ibid

⁶⁴ B.A. Hussainmiya, Supra from footnote 42 at page 333

⁶⁵ Ibid

and the Sultan had soured considerably, the status quo remained in operation until the outbreak of the Second World War.

8. The Japanese Occupation 1941- 1945

The Japanese invaded Brunei on 16th December 1941 bringing an end to what had been a decade of growth for Brunei. For the period of the Japanese occupation of Brunei, which lasted for 4 years, all the Europeans including the British Resident were incarcerated in a detention camp. It was during the Japanese occupation of Brunei that local Bruneians got their first, albeit very limited, taste of self government and surprisingly, under the Japanese regime local participation in the State Council increased⁶⁶.

With the British officers incarcerated, the Japanese made an agreement with the Sultan to deal with the administration of Brunei. Under this agreement a Japanese Governor was left in charge of Brunei administration, to be helped by Inche Ibrahim, a local man, as Chief Administrative Officer. Prior to the occupation Inche Ibrahim was secretary to the British Resident⁶⁷.

⁶⁶ B.A. Hussainmiya in *Resuscitating Nationalism, Wartime Japanese Anthropology in Asia and the Pacific* edited by Akitoshi Shimizu and Jan van Bremen, Osaka: National Museum of Ethnology, 2003 at page 285

⁶⁷ Ibid

British Borneo was entirely reorganized into five Japanese prefectures. In the absence of their British superior officers, lower ranking Malay government officials remained at their posts and carried on the administration of the country as best they could.

The State Council continued to operate in a much more limited capacity, as the Japanese found that it was useful to their administration of Brunei to allow the meetings to continue⁶⁸. For the first time however State Council meetings were run in the local Malay language. This caused a greater level of participation amongst the members and the experience of limited self-governance during this period proved to be an invaluable. The Brunei Malays essentially had a small measure of self- administration thrust upon them and this experience helped to sow the initial seeds of nationalism in the people.

It seems that at least in the early stages of the occupation the Japanese policy with regards to Borneo was "... the attainment of independence in the matter of food supply and the increased production of oil, coal and minerals and the economic exploitation of the forests"⁶⁹. While times were still undoubtedly hard, it was

⁶⁸ Hussainmiya, B.A, "The Role and Functions of State Council in Brunei Darussalam, 1907-1959", *Kemerdekaan 25 Tahun* (A collection of Articles), Yayasan Sultan haji Hassanah Bolkiah Foundation and Brunei History Association, (2012)

⁶⁹ Quoted in the secondary from AVM Horton, *Ibid* at page 36

perhaps this policy that meant that Brunei at least in the beginning of the occupation faced fewer hardships than the rest of the region. Intent on inculcating an anti- European sentiment, the Japanese embarked on a campaign of “Nipponisation” in Brunei, introducing Japanese language to the school curriculum, insisting on the use of Japanese money for transactions and even sending some young Bruneian men abroad for training⁷⁰. B.A. Hussainmiya states the reason for this course of action by the Japanese as “The propaganda and education system was designed indirectly to counter- balance any return of Western colonial governments to the East. Therefore, they selected promising indigenous young people to bear the nationalist flag should the time come.”⁷¹

When the tides began to turn for the Japanese in 1943 however, the Japanese ceased to be quite as accommodating. The initial Japanese Governor was replaced and paranoia ruled among the invaders. Stocks of everything were running low and the increasing paranoia amongst the Japanese led to more incidents of torture by the Kempeitai. In June 1945 a combined Allied force liberated Brunei⁷².

9. The British Military Administration 1945- 1946

⁷⁰ Hussainmiya, B A, Supra at note 66

⁷¹ Ibid

⁷² Ibid

“The towns, apart from Kampong Ayer, had been flattened by Allied bombing. The oilfield had been set to the torch by the retreating Japanese and the spectacular fires could not be brought under control until September 1945. The people were suffering from malnutrition and endemic disease, and many might have died of starvation had the war lasted much longer: this, too, at a time of unprecedented world shortage of food and shipping. There were insufficient materials to rehouse the homeless. Economic activity had virtually ceased⁷³”

The scene painted by the passage above by Horton summarised the daunting task faced by the British Military Administration (hereinafter referred to as ‘the BMA’) in Brunei after the Japanese had been pushed out. As the stopgap measure before the resumption of civilian administration it was not the job of the BMC to rebuild infrastructure. The goal of the BMA was twofold. Firstly it was to provide relief and secondly it was to restore a basic administration in preparation for the return of the Resident.

While the BMA was busy achieving these goals, the Colonial Office was deciding on the type of civilian administration that should be put into place in the aftermath of the war. The Colonial office was toying with the idea of a Borneo- Malaya Union⁷⁴. The subject was not however considered urgent and was only finally decided upon after

⁷³ AVM Horton, *The British Residency in Brunei*, Supra from footnote 25 at page 39

⁷⁴ CO 537/6113 Note by Mr. J Higham dated 1st February 1950

the Colonial Office had decided on its plans for Malaya. The Colonial Office's suggestions with respect to Malaya were received with such protest that it was decided to be more cautious in its dealings with Brunei

What is important to take away from the interim period of the BMA is that even at this juncture the Colonial office was already entertaining the idea of either uniting Brunei with Malaya or with the other Borneo territories. Though neither option was advanced yet, we shall see in the next two chapters that it was disagreement as to which of these two options should be followed that caused the tumultuous events leading up to and immediately after the drawing up of the first Brunei Constitution in 1959. The handover from the BMA to the British Resident happened on 6th July 1946.

10. Conclusion

This chapter has looked at the changes that occurred to Brunei governance with the coming of the British Resident. We have seen that the power of the British Resident in Brunei at this point in Brunei's history was essentially untrammled, though in the eyes of the Brunei people it was the Sultan who wielded the power. This is the point in which the first part of my central argument in this thesis become evident because this is period in Brunei's history saw the

consolidation of power into one office and the start of that power being seen to be wielded by the Sultan. We have looked at how the State Council, the only possible form of check and balance on the Resident, was essentially a “rubber stamp” used in order to legitimize the rule by Resident. We have seen the impact of the discovery of oil and also the Japanese occupation on the relationship between the Resident and the Sultan. In the following chapter we will examine how, in the years after the Second World War, British policy towards Brunei changed. We will also consider how the initial stirrings of nationalism in Brunei, combined with this change in British policy, gave rise to the promulgation of the Brunei Constitution of 1959 which was the point at which the Sultan first came into real power.

Chapter Three

1. Introduction

In the aftermath of World War Two, like many other countries in the region, Brunei witnessed a time of great political upheaval. This period in Bruneian history saw the rise of nationalism in Brunei, the wresting of power from the British Government back to the Sultan and the first attempts of the Bruneian people to be represented in the governance of the country.

The aim of this chapter is to provide an understanding of the various factions involved in the promulgation of the Brunei Constitution of 1959, their differing motivations in this first step towards Brunei independence and also to highlight the problems encountered in the writing of the Constitution.

It is my intention to examine how Brunei fared in this second wave of decolonization¹ that was sweeping South East Asia and the world² after the Allies' victory in the Second World War. This was the period

¹ As defined by Samuel Huntington and mentioned in the introduction in this thesis. Samuel P. Huntington, *The Third Wave: Democratization in the late Twentieth Century*, University of Oklahoma Press (1993)

² In the ten years after the Second World War countries such as India, Pakistan, Israel, Sudan and Ghana gained independence from the British with many more countries following suit in the 1960's.

in which Brunei's neighbour Malaysia gained its independence from the British. My focus in this chapter is on the period immediately following the handing back of the administration of Brunei from the British Military Administration to the British Resident in September 1946 to the promulgation of the first Brunei Constitution in September 1959. At the end of this chapter, we will understand why the Brunei Constitution of 1959 took the form it did and see how this Constitution in fact consolidated great power in the hands of the Sultan. This transfer of power from the Resident to the Sultan under the Brunei Constitution of 1959 was the first step in the building of the absolute monarchy we see in Brunei today.

There were three main factions heavily involved in this period of Brunei history: the British Government, the Sultan and the Brunei People's Party. I will first look at these three factions to understand their motivations and what they hoped to achieve by way of the promulgation of a written constitution.

This will be followed by a thorough analysis of two reports prepared for the purposes of making recommendations as to what a written constitution of Brunei should contain. These two reports were the Report of the Brunei Constitution Advisory Committee, which was an advisory committee set up by the Sultan, and the Hickling

Memorandum, which was a report prepared by the Office of the High Commissioner to Borneo.

Moving forward, I will then consider the negotiations that took place between the British Government and the Sultan in drafting the Constitution as well as the role the Brunei People's Party tried to play in these negotiations. This chapter concludes with a look at the Brunei Constitutional Conference in March and April 1959 where the Brunei Constitution of 1959 was promulgated.

2. The Factions

2.1. The British Government

After the Second World War, Sarawak and North Borneo formally became British colonies. Brunei however maintained its status as a protectorate with an independent sovereign. Regardless of the lack of change in Brunei's legal status, the changes in the neighbouring Sarawak and North Borneo, as well as changing British Government attitudes in the aftermath of the war, necessitated a restructuring of the British Empire in South East Asia.

Malcolm MacDonald, the first Commissioner General of South East Asia, suggested the formation of a Malaysian federation from all the

British territories in South East Asia³. This idea was subsequently found unsuitable on the grounds that political progress in the North Borneo territories was so far behind that of Malaya and Singapore that such a federation would be unworkable⁴.

British policy then shifted towards the idea of a North Borneo Federation- an idea that had previously been proposed by Sir Cecil Clementi, Governor for the Straits Settlements and High Commissioner for the Malay States and Brunei from 1930 to 1933⁵. This proposal for a North Borneo Federation was taken up in 1947 by MacDonald, who thought that while Brunei should remain a separate state, it was too small to be left to stand on its own administrative feet.⁶

With these considerations, the Colonial Office contemplated the option of combining the administration of Brunei with either that of North Borneo or Sarawak. The Colonial Office decided that, from 1st May 1948, Brunei would be administered by the British administration

³ J.R. Angel, *'The Proposed Federation of Sarawak, North Borneo and Brunei'*, Unpublished dissertation, University of Sydney, Sydney, 1963 at page 338. Taken in the secondary from D.S. Ranjit Singh, *Brunei 1839-1983: The Problems of Political Survival*, Oxford University Press (1984) at page 127

⁴ *Secretary of State to the Colonies, Straits Times*, 4th June 1954

⁵ N. Tarling, *Sir Cecil Clementi and the Federation of British Borneo*, JMBRAS, Vol. 44, No. 2, 1971, pages 1 - 34

⁶ CO 537/2244, Telegram from the Governor General of Malaya to the Secretary of State for the Colonies, 16th May 1947

in Sarawak⁷. The reasons given by the Colonial Office to the Sultan for this change was twofold. Firstly to bring Brunei in line with changes that were happening in Borneo and Malaya after the war and secondly to improve the services that the British administration could render to Brunei as a result of it being part of a larger body⁸.

Sarawak was chosen over North Borneo for the very practical reason that, because Limbang (now a part of Sarawak) divided Brunei geographically into two parts, it would be more efficient for Brunei to be administered by the British officials in Sarawak.⁹ This was not a popular decision with the Bruneian Sultan or his nobles. They considered it an affront to their dignity to be subservient to the Sarawak administration as, not too long before, Sarawak had been ruled by Brunei¹⁰. This decision to administer Brunei from Sarawak, added to the resentment from the loss of Limbang, was perhaps what initially soured the prospects for a North Borneo Federation¹¹ from the perspective of the Brunei Sultan.

The man charged with pushing forward the Colonial Office idea of a North Borneo Federation in the region was Anthony Abell, the

⁷ C0537/2244, Memorandum by the Secretary of State for the Colonies on the Future of Brunei, 24th December 1947

⁸ Notes of Malcolm Macdonald from talks with Sultan of Brunei and his advisory council, 27th November 1947, CO 537/2244

⁹ Ibid

¹⁰ Ibid

¹¹ Nicholas Tarling, "Britain and Sarawak in the Twentieth Century", *JMBRAS*, Vol 43, No. 2, 1970.

Governor of Sarawak and High Commissioner for Brunei¹². It was in the difficult climate of resentment caused by the change in administration that Abell was asked to push forward the idea of the North Borneo Federation to the Sultan of Brunei. To achieve this task, High Commissioner Abell started to cultivate a personal relationship with the Sultan, knowing that he would need the Sultan's cooperation should he hope to be successful in his endeavour¹³.

The new Sultan Omar Ali Saifuddin III, crowned in 1950, was an educated man with a strong sense of nationalistic pride. Abell quickly realised that unlike the Sultans before him, who were easily restrained by the terms of the 1906 treaty with the British, this new Sultan would not be so pliable. The character of the new Sultan, and the post war sentiment, caused the British to consider a reassessment of the 1906 treaty¹⁴. The British were however of the view that the treaty could not be revised until a constitution on "democratic and acceptable lines" was established¹⁵. Additionally Hussainmiya is of the opinion that the British Government had another compelling reason for pursuing the idea of a written constitution in Brunei. Having realized that there were procedural lapses in the manner in which the Resident passed laws in Brunei,

¹² Hussainmiya, B A, Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam, Oxford University Press, (1995)

¹³ Ibid

¹⁴ B.A. Hussainmiya and Nicholas Tarling, "Brunei: Traditions of Monarchic Culture and History", Brunei Press Sdn. Bhd (2011)

¹⁵ Ibid

the British Government was keen to rectify the problem and to formalize law-making processes in Brunei¹⁶.

2.2. The Sultan

Between 1946, when the British Military Administration handed Brunei back to the British Resident, and the Constitution of 1959, there were two Sultans in power.

The first was Sultan Ahmad Tajuddin, who ruled from 1924 to 1950. Sultan Tajuddin ascended the throne as a minor at the age of eleven. However, due to the fact that he was a minor, Brunei was actually ruled by a Council of Regency until 1931 when Sultan Ahmad Tajuddin turned eighteen¹⁷. The Council of Regency was comprised of the two highest nobles at the time i.e. the Bendahara and the Pemancha.

Sultan Tajuddin was the ruling Sultan during the time of the Second World War and it was during his reign after the war that relations between the Sultan and the Resident began to deteriorate. Much of this strained relationship can be attributed to the fact that Sultan Tajuddin was hardly allowed to enjoy the profits of the oil wealth with

¹⁶ B.A. Hussainmiya, "The Brunei Constitution of 1959: An Inside History", Brunei Press Sdn. Bhd (2000) at pages 14 to 16

¹⁷ Hussainmiya, B A, Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam, Oxford University Press, (1995)

which Brunei was now rich¹⁸. As seen in the previous chapter, the Resident had a very tight hold on the nation's purse strings. The difficult relationship with the Resident, combined with Sultan Tajuddin's poor health, meant that he spent very little time on state affairs and, indeed, very little time in the State.

In his absence, his brother, Omar Ali Saifuddin at that time styled as Pengiran Muda Tengah, became heavily involved in state affairs. He was made a member of the State Council in 1942 and was trained in the office of the Japanese Military Administrator of Brunei. In 1947 he was given the title Pengiran Bendahara (First Minister) and it was in this role that he came to be greatly respected by both the British Government as well as the Brunei people. He formed the ideal link between the British and the Brunei people¹⁹.

Upon the death of his brother Sultan Ahmad Tajuddin in 1950, Pengiran Bendahara Omar Ali Saifuddin ascended the throne with the support of both the British government and the Brunei dignitaries²⁰.

Ascending the throne at the age of thirty- five the Pengiran Bendahara, now styled Sultan Omar Ali Saifuddin III, had the

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

immediate advantage over the two previous Sultans in that he was not a minor at the point of accession. As a mature adult, with his own experiences when he became Sultan, he was much less inclined simply to take advice given to him at face value. Sultan Omar Ali Saifuddin III was the first Sultan to have received a formal education. This, coupled with his work in various government departments from the age of twenty- one, and his involvement with local government from before the Japanese occupation, had given the Sultan a real determination to advance his country socially, politically and economically²¹.

From the start of his accession to the throne in 1950 Sultan Omar Ali Saifuddin III began to assert his independence as a monarch and challenge the British administration on what he believed to be decisions in which he should be involved as Sultan of Brunei²². An example of this was seen in 1953 when the Resident attempted to get assent from the State Council for the passing of the State Treasurer (Incorporation) Enactment. Previously the State Council would have “rubber stamped” the enactment. In this case, encouraged by the new Sultan, the State Council decided that the passing of the enactment would allow the State Treasurer too much

²¹ Ibid

²² Ibid

discretion. When the motion was put to a vote the enactment was defeated²³.

The Sultan formed a close relationship with Abell, the High Commissioner for Brunei, which came at the expense of the Sultan's relationship with the Resident. In fact the Sultan's regular complaints to Abell of the "high handedness" and insensitivity of the two Residents at the beginning of his rule, J.C.H Barcroft (Resident from 1951 to 1953) and J.O. Gilbert (Resident from 1953 to 1958), caused Abell, rather reluctantly, to give in to the Sultan's wishes and have them transferred to other positions within the British administration²⁴.

The Sultan increasingly sought more power to make political decisions and also to have more latitude in deciding how the country's wealth was being used for its future advancement. Aware of the nationalist movements in neighbouring Indonesia and Malaysia it was at this juncture that the Sultan started to demand that the

²³ BA/0682/1983, Minutes of Brunei State Council meeting 9th April 1953. Cited in the secondary from B.A. Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain: The making of Brunei Darussalam*, Oxford University Press (1995) at pages 70 to 72

²⁴ Full details of the events that caused the transfer of these two residents can be found in B.A.Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain: The making of Brunei Darussalam*, Oxford University Press Southeast Asia (1997)

terms of the 1906 treaty be revised and that a constitution for Brunei be promulgated.²⁵

Ranjit Singh in his book on the political survival of Brunei stated the Sultan's intentions for the future as follows: -

“(The Sultan) being conservative in outlook, sought to provide national leadership through a programme of guided democracy following the virtues of a paternalistic, enlightened despotism. (The Sultan) wanted Brunei to come out of its political backwater status as under the Residential System and therefore wished to introduce constitutional changes designed towards the gradual achievement of self- government but one controlled by the Sultan who alone by virtue of his despotic will could bestow whatever democratic institutions he deemed desirable”²⁶

While the Sultan was aware that he would have to contend with British government interests in achieving his aim he did not anticipate that he would have to deal with political aspirations from the Brunei people in the form of a political party.

2.3. Partai Rakyat Brunei (Brunei People's Party)

²⁵ B.A. Hussainmiya and Nicholas Tarling, *Brunei: Traditions of Monarchic Culture and History*, Brunei Press Sdn. Bhd. (2001) at pages 22- 24.

²⁶ See Singh, *supra* at note 3

The Partai Rakyat Brunei (hereinafter referred to as the PRB) or the Brunei People's Party was formed on 22nd January 1956 by A.M. Azahari²⁷. Sent to Indonesia to further his education by the Japanese during the Japanese occupation, Azahari was highly influenced by the nationalist movements towards independence in both Malaysia and Indonesia in the 1950's and became politically active in Brunei in 1952. The PRB, due to the influences that Azahari brought to it, was modeled on the left-wing Malayan Party Rakyat²⁸. The PRB was successfully registered²⁹ as an organization in 1956 with a party manifesto that stated its aims as being: -

"...(to) oppose all forms of colonialism, safeguard the position of the Sultan and his heirs, fight for the freedom of Malay homeland, and bring about the formation of one Malay nation and state covering the whole Malay Archipelago"³⁰

Singh³¹ observes that the PRB seems not to have had a clear objective; rather that the manifesto put together a series of ill-defined end results. His summation of the various goals of the PRB is succinctly put as follows:-

²⁷ Hereinafter referred to as Azahari

²⁸ M.B Leigh, *The Rising Moon, Political Change in Sarawak*, Sydney University Press, Sydney, 1974 at page 44

²⁹ In Brunei up to the present day all societies and organizations have to be registered under the Societies Act, Chapter 66 Laws of Brunei (1951)

³⁰ Quoted in the secondary from A.C. Brackman, *Southeast Asia's Second Front: The Power Struggle in the Malay Archipelago*, F.A. Praeger, New York, 1966 at page 138

³¹ D.S. Ranjit Singh, *Brunei 1839 – 1983: The Problems of Political Survival*, Oxford University Press, 1984

“Firstly, he (Azahari) revealed his idealistic, romantic side when he spoke of the creation of the ‘Malay Homeland’ or ‘Melayu Raya’ comprising the whole of the Malay – Indonesian archipelago. In this context his idea was strikingly similar to Sukarno’s ‘dream’ of 1945, when he envisaged a pan- Indonesian state comprising the whole archipelago. Secondly. More definite but short- lived, was his support for a federation of the Federation of Malaya, Singapore, Brunei, Sarawak and British North Borneo as suggested by Tunku Abdul Rahman in 1955. Thirdly, despite his support for the Federation concept as suggested by the Tunku, Azahari indicated his intention of asking for the return of British North Borneo and Sarawak to Brunei. He has a dream of resurrecting the glories of the Brunei Empire and it was this dream that he adhered to fervently after 1958”³²

The PRB was the first political party in Brunei and was said to have attracted about 10 000 followers even prior to its official registration. This was a large percentage of the Brunei population which at that point was estimated to be only about 40 000 people. With this large following, and buoyed by the nationalist fervour that was sweeping South East Asia in the 1950’s, the PRB wanted democracy in Brunei and furthermore, they wanted to take a leading role in the discussions that would have to take place for the transfer of power from the British government to the Brunei people³³.

³² D.S. Ranjit Singh, *Brunei 1839 – 1983: The Problems of Political Survival*, Oxford University Press, 1984, at page 133

³³ B. A Hussainmiya, *The Brunei Constitution of 1959: An Inside History*, Supra from footnote 12 at page 30

The PRB saw the future of Brunei as one that was more democratic, with the leadership of the nation being shared with the people via a rapid democratization of governmental institutions.³⁴ As will be covered later in this chapter, it was their desire for this constitutional progress to occur at speed, that, in the end, restricted their ability to contribute to the writing of the new constitution. It was also this hasty approach that led to a state of emergency being declared in Brunei in 1962, which will be discussed in Chapter Four.

3. The Sultan's Titah (Proclamation)

With the general feeling in Brunei in the early 1950's being that a move should be made towards Brunei becoming more self-governing, the question then became how this change should take effect. The British Government was at this point, wrestling with the question of whether they had the authority to frame this constitution for Brunei.³⁵ What legal authority did they have to do this, given that Brunei was not a colony but a protectorate. The terms of the 1906 treaty specifically stated that the Sultan of Brunei was an independent ruler. Brunei's sovereignty precluded the British from

³⁴ D.S. Ranjit Singh, *Brunei 1839 – 1983: The Problems of Political Survival*, Oxford University Press, 1984, at page 125

³⁵ B.A. Hussainmiya, "The Brunei Constitution of 1959: An Inside History", Brunei Press Sdn. Bhd (2000)

launching a constitution for Brunei via an Order-In-Council, as they would have done for a colony.

Understanding his status as sovereign ruler of Brunei, the Sultan pre-empted a decision being made by the British on how they could implement a constitution by making a speech that expressed his desire to grant Brunei a constitution by the power vested in him as Brunei's Sultan. His opening to this "*titah*", or proclamation, made on 12th May 1953, is as follows:-

"For some time it has been my intention and desire to grant to my people a written constitution by means on which proper provision can be made for the Government and well- being of our State of Brunei. It is my wish to set out in this Constitution firstly, the laws by which the succession to the Sultanate shall be secured, and such other matters relating to the sovereign and his family as is right and proper; and secondly, the composition, powers and duties of the State Council together with rules for the conduct of the State business and the making of laws"³⁶

Thus the wheels were set in motion for the first Brunei Constitution.

4. The Report of an advisory Committee- the Tujuh

Serangkai³⁷

³⁶ Quoted in the secondary from Hickling R.H, *Memorandum Upon Brunei Constitutional History and Practice*, Brunei Museum, June, 1955.

³⁷ Full report can be found at CO 1030/113

The Sultan's first action, with regards to the preparation for the constitution, was to set up an Advisory Committee made up of seven Brunei Malays who represented a wide range of views, from the more liberal opinions of the educated teachers to the more orthodox views of religious officials. The committee was called "Tujuh Serangkai"³⁸ and its objective was to canvas public opinion on the content of the proposed constitution and prepare a draft of the proposed constitution³⁹. To satisfy the mandate given to them, the committee travelled to the four districts of Brunei to gather public opinion. They then visited the Malayan states of Johore, Negeri Sembilan, Kedah and Kelantan to study the constitutions of these States to aid the drafting of a constitution for Brunei. The report, as well as a draft constitution, were then submitted to the Sultan and the British Resident in November 1954⁴⁰ and forwarded to the Colonial Office to be used as a starting point for negotiations.

The Tujuh Serangkai Report was arranged into 8 parts, each containing recommendations based on the outcome of the fieldwork that was done. I will be discussing the report by dealing with each of the 8 parts in turn. The parts contained in the report are as follows:-

³⁸ Translated this means "Seven branches"

³⁹ Pehin Orang Kaya Amar Diraja Dato Seri Utama Dr. Hj Awang Mohd. Jamil Al Sufri, *Brunei Darussalam: The Road to Independence*, Brunei History Centre, Bandar Seri Begawan, 1992 at page 66

⁴⁰ CO 824/3- Brunei Annual Report 1954

1. government and matters affecting it;
2. the Sultan, his Heir and ministers;
3. Council of State;
4. District Council;
5. Town/ Municipal Council;
6. Brunei citizenship;
7. Chief Penghulu, Penghulu and Headmen;
8. Other recommendations.

4.1. Government and matters affecting it

This is perhaps the first official mention of “Islamic Democracy” as a policy of the Brunei Government⁴¹. While this idea is not elaborated on, there is in the report a clarification that Brunei would always have a sovereign Sultan who has full authority in the country. From this it is possible to deduce that the Tujuh Serangkai committee did not see the concept of “Islamic democracy” as running contrary to the idea of an absolute monarchy. As will be seen in the last two chapters of this research, the current Brunei government has taken this concept forward by the introduction of the Brunei national vision of “Malay Islamic Monarchy” in the last years of the 20th century.

⁴¹ CO 1030/113- Tujuh Serangkai Report, Part A, Section 1

The introductory chapter of the report specifically mentions the desire to keep friendly relations with the British government. It however also emphasizes Brunei's independence from the British and confirms the Sultan as the sovereign ruler of Brunei with full authority over the country⁴². It further confirms Islam as the official religion of the country⁴³ and Malay the official language⁴⁴. The significance of this introductory paragraph is its insistence on the Sultan's dominion over all matters concerning the governance of the nation. Despite being a report made for the purposes of research for a constitution, instead of affirming a desire for greater self governance, the report started with a desire to be governed in an absolute fashion by a monarch.

On the matter of the British Resident, the report's suggestion was to change the title to that of "British Adviser" to mark a change in the role of this British official in Brunei⁴⁵. In contrast to the role in the 1906 agreement, it was suggested that while the "British Adviser" continues to offer the Sultan good advice on all matters other than that of the Islamic religion and Malay custom, this advice is something that the Sultan is not obliged to accept and put into action.

⁴² CO 1030/113- Tujuh Serangkai Report, Part A, Section 2

⁴³ CO 1030/113- Tujuh Serangkai Report, Part A, Section 4

⁴⁴ CO 1030/113- Tujuh Serangkai Report, Part A, Section 3

⁴⁵ CO 1030/113- Tujuh Serangkai Report, Part A, Section 5(1)

The Tujuh Serangkai committee recommended that appointments to the posts of British Adviser⁴⁶ and British High Commissioner⁴⁷ should meet the approval of the Sultan and additionally meet the criteria of being a senior officer, fluent in the Malay language and familiar with Malay customs. The significance of this is that it is an assertion of the Sultan's power over the representative of the British Government. As we see in the rest of this report, this assertion is a theme that seems to run through the whole report, indicating a desire of the people to return to being internally self governing again.

Perhaps the most important and controversial recommendations from the Committee were contained in their suggestion for the transfer of all the powers of the High Commissioner to the Sultan and the State Council, as well as the transfer of all the powers of the British Resident to a new post of Menteri Besar (First Minister), who should be Bruneian, Malay and Muslim⁴⁸. The said Menteri Besar would be the chief government officer in Brunei. The Committee then gives recommendations as to the procedure and tenure of the post of Menteri Besar. Here again we see a recommendation by the committee to divert power away from the British administration in Brunei.

⁴⁶ CO 1030/113- Tujuh Serangkai Report, Part A, Section 5(3)

⁴⁷ CO 1030/113- Tujuh Serangkai Report, Part A, Section 6

⁴⁸ CO 1030/113- Tujuh Serangkai Report, Part A, Section 7

Other recommended posts were that of a Secretary of State⁴⁹, a Legislative Advisor⁵⁰ and a State Financial Officer⁵¹. Again the Tujuh Serangkai committee provided criteria that the people in these new posts should fulfill as well as procedure and tenure of appointment. With these appointments, as it was for the position of Menteri Besar, the Committee recommended that the holders of these posts should be Bruneian, Malay and Muslim. For all these recommended posts the method of appointment that was suggested was appointment by the Sultan with the consent of the “Jamaah Pemangku Negeri”⁵² and of the State Council.

The Committee recommended the establishment of a Council- of- State, four District Councils and a State Executive Council and suggested the composition of members for these councils⁵³.

On the subject of a Brunei administrative service the Committee appreciated that there was a lack of training in the Brunei populace to have an effective administration. The committee therefore recommended that the onus for providing education and training

⁴⁹ CO 1030/113- Tujuh Serangkai Report, Part A, Section 9

⁵⁰ CO 1030/113- Tujuh Serangkai Report, Part A, Section 12

⁵¹ CO 1030/113- Tujuh Serangkai Report, Part A, Section 11

⁵² This was a council that the Tujuh Serangkai committee suggested be set up. The composition and functions of which will be explained in the next sub section.

⁵³ CO 1030/113- Tujuh Serangkai Report, Part A, Section 13

(including Islamic education and training in Islamic laws) should fall to the Brunei Government with the support of the Sultan⁵⁴.

The Tujuh Serangkai Committee recommended the ideas of the Governmental protection of the Bruneian people (which would include the setting up of a Malay army)⁵⁵, freedom from unlawful detention, freedom of speech and assembly, the right to a fair trial and religious freedom⁵⁶. Here we see recommendations that fall more in line with traditional tenets of constitutionalism.

The Committee cautioned against the admission of foreigners into Brunei. The report mentioned that the reason for this caution was for fear of being inundated by non Malay foreigners⁵⁷. This was perhaps a reflection of the fear that the Malay race in Brunei would cease to be a majority. The Committee also cautioned against allowing the entry into Brunei of any foreign military presence⁵⁸. The report specifically recommended that any suggestions of uniting Brunei with neighbouring Sarawak and Sabah should not be entertained. Should unification be necessary then their recommendation was that Sabah

⁵⁴ CO 1030/113- Tujuh Serangkai Report, Part A, Section 14

⁵⁵ CO 1030/113- Tujuh Serangkai Report, Part A, Section 19

⁵⁶ CO 1030/113- Tujuh Serangkai Report, Part A, Section 15

⁵⁷ CO 1030/113- Tujuh Serangkai Report, Part A, Section 22

⁵⁸ CO 1030/113- Tujuh Serangkai Report, Part A, Section 20

and Sarawak be restored to Brunei due to the fact that historically they were part of Brunei⁵⁹.

The Tujuh Serangkai Committee ended this part of their report by affirming that the Sultan alone with the consent of the State Council should have the power to amend the constitution and called for a restructuring of the agreements between Brunei and the British government made in both the 1888 and the 1906 treaties⁶⁰. This part of the report seems rather contradictory in aim because on the one hand it calls for a division of power but on the other hand also affirms the Sultan's supreme role in governance.

4.2. The Sultan, his heir and ministers

The first recommendation in this section of the report was the setting up of a "Jamaah Pemangku Negeri", a council translated by the report as "The supporters of the country"⁶¹. This council would have the function of ensuring the succession to the throne and also of appointing the traditional ministers. The Tujuh Serangkai Committee then went on to recommend that the composition⁶² of this council should be:-

⁵⁹ CO 1030/113- Tujuh Serangkai Report, Part A, Section 21

⁶⁰ CO 1030/113- Tujuh Serangkai Report, Part A, Section 24

⁶¹ CO 1030/113- Tujuh Serangkai Report, Part B, Section 1

⁶² CO 1030/113- Tujuh Serangkai Report, Part B, Section 2

1. all the ministers (Wazirs);
2. all the Cheterias (members of the princely or warrior caste);
3. six Menteris (Pehins);
4. two religious leaders (of Islam);
5. all the Malay members of the State Council;
6. one Menteri Darat for every district;
7. two or three suitable persons of royal blood.

This section then confirmed that the Sultan of Brunei should be a Bruneian, Male, Malay, Muslim and have attained 21 years of age. It confirmed the rules that should be followed in determining the order of succession to the throne as well as a short list of what would make an heir to the throne ineligible to succeed.

On the matter of the heir to the throne, the Committee recommended the title that should be given to the heir, detailed requirements of the heir to the throne, as well as the procedure for the official appointment of the heir⁶³.

Although the recommendations stated that the Sultan should have attained twenty- one years of age, provision was made for the

⁶³ CO 1030/113- Tujuh Serangkai Report, Part B, Section 4 to 6

eventuality that the rightful heir might be a minor. The Committee recommended the composition of a Council of Regency in such situations. It further recommended the criteria for members of the Council of Regency and the procedure for appointment to the Council of Regency⁶⁴.

The Committee detailed recommendations for behaviour that would invalidate the Sultan's right to his position and then set out a list of royal personages who were to be entitled to a subsistence allowance from the Sultan, via the government⁶⁵.

With respect to the recommendations as to Ministers, the Committee recommended the provision for titles and medals to be given to deserving Bruneians by the Sultan, on the advice of the Jamaah Pemangku⁶⁶. The Committee also recommended that the appointment of to the traditional Brunei posts of Wazirs and Cheterias should also be within the ambit of the Jamaah Pemangku, set out the criteria for appointment to those positions as well as the method of appointment and remuneration available for those positions.

⁶⁴ CO 1030/113- Tujuh Serangkai Report, Part B, Section 7

⁶⁵ CO 1030/113- Tujuh Serangkai Report, Part B, Section 15

⁶⁶ CO 1030/113- Tujuh Serangkai Report, Part B, Sections 22 to 25

These recommendations by the committee with the aim of clarifying succession in Brunei could be viewed as an attempt to further bolster the Sultan's position in Brunei by ensuring that the line of succession follows the rules of promogeniture.

4.3. Council of State

The Tujuh Serangkai Committee recommended that with regards to the State Council, the method of election should be "amended according to ... the ways of governing adopted by the United Kingdom" with the intention of "giving the Bruneian people the opportunity to participate in governing the country".⁶⁷

The composition of the State Council, as advised by the committee was as follows:-

"III(1) We bring forward that the State Council Brunei should possess 28 members, including:-

- (a) five ex- officio members- Prime Minister, Secretary of State, State Financial Officer, Legal Advisor and the British Advisor
- (b) six official members including the Pengiran Bendahara, Pengiran Pemancha, Head of the Cheteria, The Chief Religious Officer, The President of the Municipal Council and the Head of the Menteri

⁶⁷ CO 1030/113- Tujuh Serangkai Report, Part C

- (c) Fourteen unofficial members to be elected by the public through the representatives in the District Councils
- (d) Members elected by the Sultan from among religious officers, government servants or the public⁶⁸

The Committee then detailed the breakdown of the fourteen unofficial elected district members by district, and laid down reasons for the rejection of any person to be appointed to the State Council. There were also recommendations as to tenure of office, the setting up of standing orders for State Council meeting, and the method of election⁶⁹.

It was recommended by the Committee that any would be ordinances⁷⁰ would have to be discussed and approved by a majority in the State Council, and signed and sealed by the Sultan, before they would be legally binding⁷¹. All such ordinances were to be published in an official government gazette. The recommended duty of the State Council generally was to advise and assist the Sultan in the governance, administration, and politics of Brunei⁷².

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ An ordinance was the first form of a law in Brunei at the time. An equivalent in the UK would be a bill.

⁷¹ CO 1030/113- Tujuh Serangkai Report, Part C

⁷² CO 1030/113- Tujuh Serangkai Report, Part C

While the committee recommended elections as method of populating half the state council, the fact remains that fifty percent of the recommended state council would be elected and the other fifty percent would be elected by the Sultan. Realistically this composition would have made it difficult for the state council to do anything that was against the wishes and the will of the Sultan for this reason. It is also noted that the duty of the state council as recommended seems to bridge both legislative and executive functions, which would not be in line with traditional constitutional practice.

4.4. The District Council

The recommendations of the committee with respect to the district councils were very comprehensive and covered:-

1. the matters which would fall within the ambit of the district councils
2. powers of the district councils
3. rights of the members
4. criteria for members
5. disqualification
6. tenure of office
7. criteria for voters

8. a breakdown of positions available per district as well as a list of unofficial members by district⁷³.

4.5. The Town/ Municipal Councils

Here the Committee recommended the setting up of two Town or Municipal Councils whose function would be to promote the health and the physical development of Brunei. Detailed recommendations were provided for the composition of members, tenure of office, method of election to the municipal board, and eligibility criteria for voters⁷⁴.

The significant of both the recommendations for the district and town councils is that they recommended that the members of these councils be elected, showcasing a desire by the people to be more involved in their own governance

4.6. Brunei Citizenship

Within this section the Tujuh Serangkai Committee made recommendations for who should be considered “subjects of His

⁷³ CO 1030/113- Tujuh Serangkai Report, Part D

⁷⁴ CO 1030/113- Tujuh Serangkai Report, Part E

Highness the Sultan”⁷⁵. Recommendations were also made for the criteria foreigners would have to meet to become naturalized Bruneian citizens. Noteworthy about these recommendations in general is that the residency requirement before an application to be naturalized was set at a rather lengthy 15 years. This perhaps reflects fears implanted in the committee members by their Malayan counterparts who were facing fears of being pushed out by Chinese merchants.

4.7. Chief Penghulu, Penghulu and Headmen

This section contained the Tujuh Serangkai Committee’s recommendations as to the method of appointment, tenure of appointment, criteria for candidates, jurisdiction and remuneration for the positions of Village Headmen, Penghulu (chief of headmen) and Chief Penghulu⁷⁶.

While these positions were not to be elected, the significance of these recommendations is their intention to create more positions that would allow more public participation in the governance of Brunei.

4.8. Other Recommendations

⁷⁵ CO 1030/113- Tujuh Serangkai Report, Part F

⁷⁶ CO 1030/113- Tujuh Serangkai Report, Part G

This part of the Committee report reads, essentially, like a catch all section, where the committee provided recommendations to deal with the myriad of problems that were brought to their attention when interviewing the Bruneian public in the four districts. Among the recommendations were an increase in governmental wages; the building of an oil refinery plant in Brunei; and the provision of overseas university scholarships for Bruneian youth⁷⁷.

5. The Hickling Memorandum⁷⁸

The British government considered some of the recommendations of the Tujuh Serangkai committee too drastic to allow for a safe transition of power. Tarling is of the opinion that the British government was also struggling to find a balance between their “altruistic ideal of introducing progressive constitutional government with the desire to safeguard their own commercial and strategic interests”⁷⁹

It was in order to consider what the next constitutional steps were in Brunei in light of the recommendations forwarded by the Tujuh

⁷⁷ CO 1030/113- Tujuh Serangkai Report, Part H

⁷⁸ Memorandum found reproduced in full in B.A.Hussainmiya and Nicholas Tarling, Brunei: Traditions of Monarchic Culture and History, Supra from footnote 15

⁷⁹ B.A.Hussainmiya and Nicholas Tarling, Brunei: Traditions of Monarchic Culture and History, Supra from footnote 15 at page 26

Serangkai that a memorandum, the Hickling Memorandum, was prepared by R.H. Hickling, the Ex Officio Legal Adviser based in Sarawak at the time, for the British Government⁸⁰. Hickling's involvement with the drawing up of the draft proposals for the Constitution of Sarawak, and his knowledge of Brunei Laws and Malay customs from his time in Sarawak, made him particularly suited to this task. Whilst not prescribing any specific provisions to be included into the Brunei Constitution, the Hickling Memorandum provided a succinct discussion of the issues that were the main concerns of the British administration. The objective behind the memorandum was to serve as an aid for the familiarisation of colonial officers with conditions in Brunei.

The first half of the Hickling Memorandum gives an overview of the early history, geography, racial make- up, religious views, government and economic situation of Brunei in 1954. Hickling also discusses the Residential system as well as the operation of the State Council. Whilst the Hickling Memorandum provides an excellent overview of Brunei, to consider all the points discussed in it would not advance this chapter further for the reason that the first half of the Hickling memorandum covers the same content that has been previously discussed in detail in Chapters One and Two of this thesis. I will instead consider only the matters in his report which I

⁸⁰ Ibid

have identified as being directly relevant to the Tujuh Serangkai report and the Brunei Constitution. I will discuss the Hickling Memorandum under the following themes of discussion.

1. the status of Brunei;
2. the Resident, the High Commissioner and the State Council;
3. the Sultan and his heir;
4. Brunei citizenship;
5. District Councils.

5.1. The status of Brunei

To paraphrase Wright, when writing about Brunei, he observes that the Sultan of Brunei is an independent sovereign who does not have control over the internal affairs of his country. The Resident exercises internal control and the British Crown, though a fundamental institution in Brunei, does not possess full legislative authority or jurisdiction⁸¹.

Tarling adds to this confusion of what the status of Brunei is to the British and therefore the status of Sultan, by questioning the description of the Brunei Sultan as an “independent sovereign”. Prior

⁸¹ Wright, *British Colonial Constitutions*, Oxford University Press (1974) at page 10

to the coming of the Resident, traditional governance required that the Sultan be advised by his ministers; a role that was taken over by the British Resident upon the British involvement in Brunei. Tarling implies that the practice of consultation, prior to the arrival of the British, meant that Brunei was never, in fact, ruled absolutely by one person. This view was supported by Sir Frank Swettenham, High Commissioner for Brunei, when he stated "Although Brunei had no written Constitution the Sultan had in practice been a constitutional monarch, always acting with the advice of at least two of his Ministers."⁸²

From these conflicting opinions it is evident that the extent of the Sultan's power and the status of Brunei's sovereignty was uncertain. This uncertainty would have had an effect on how Britain could proceed with regards to Brunei. Hickling therefore spent a substantial portion of his memorandum considering Brunei's legal status. Hickling considers the differences between a protectorate, a protected state and a colonial protectorate and concluded that the situation in Brunei most likely resembled that of a colonial protectorate. For this reason he concluded that the British Government could legally confer a constitution on Brunei by means of an Order-in-Council under the Foreign Jurisdiction Act 1890. Hickling was also however of the opinion that promulgating the

⁸² CO 1030/113, Correspondence Between Sir F. Swetteham and the Colonial Office, 23rd March 1955.

Brunei Constitution in that manner would not be the correct solution because to do so would likely cause a political uproar and therefore unlikely to advance any future plans the British had for Brunei.⁸³

5.2. The Resident, the High Commissioner and the State Council

On the office of the Resident, other than a consideration of the powers of the Resident, Hickling also summarised the constitutional developments that had taken place under the Resident chief of which is the State Council. As these constitutional changes, as well as a discussion of the State Council, have already been discussed in great detail in Chapter Two of this thesis, I will only consider Hickling's points in brief.

On the matter of the State Council, Hickling's memorandum observes that the composition and functions of the State Council had never been defined, a consequence of which was that the council dealt with legislative, executive and judicial matters.

The Memorandum then went on to consider the practical effect of Brunei being administered by the British administration in Sarawak⁸⁴.

⁸³ CO 1030/113, R.H. Hickling Memorandum upon Brunei Constitutional History and Practice at paragraphs 134 to 144.

The High Commissioner for Brunei, who was also Governor of Sarawak would now, by constitutional convention, be required to approve all Bruneian legislation, by virtue of the Resident being the agent and representative of the High Commissioner, and the High Commissioner, in turn, being the person appointed to act on behalf of the British Crown.

Hickling noted that despite the fact that the treaty of 1906 did not permit the Resident to give advice on matters pertaining to the Islamic religion, by virtue of the widespread functions of the Resident and the High Commissioner, legislation concerning these two areas, in practice, required the approval of the High Commissioner. In his discussion of the functions of the High Commissioner and the Resident, Hickling drew heavily on his experience in Malaya to cast a better understanding of the Brunei situation⁸⁵.

The Memorandum then follows, via an examination of colonial office correspondence to the British Resident, suggestions for the next step in Brunei constitutional development. These included the separation of the State Council functions into two different councils, i.e. a Legislative Council to function as the law-making arm of the

⁸⁴ Hickling Memorandum, Ibid at paragraphs 118 to 123

⁸⁵ Hickling Memorandum, Ibid, at paragraphs 40 to 82

government, and an Executive Council to deal with policymaking and the day-to-day problems of Government⁸⁶.

5.3. The Sultan and his heir

On the issue of succession, Hickling observed that there appeared to be two codes of social law in operation in the Malay countries, of which Brunei was no exception. These were the Hukum Kanun (local traditional customary codes) and the Hukum Syaria (codes of Islamic law). Hickling examined how the operation of these two types of social law, hand in hand, had contributed to the situation where the issue of succession in Brunei was not clear⁸⁷.

5.4. Brunei Citizenship

Hickling considered the status of a British Protected Person in Brunei and who would fall within this category, under the British Protectorates, Protected States and Protected Persons Order-in-Council 1949⁸⁸. He also looked at the criteria for the naturalization of a British Protected Person as a citizen of the United Kingdom under the British Nationality Act 1948⁸⁹. The reason he considered these

⁸⁶ Hickling Memorandum, Ibid at paragraphs 126 to 127

⁸⁷ Hicking Memorandum, Ibid at paragraphs 32 to 34

⁸⁸ Hicking Memorandum, Ibid at paragraphs 97 to 117

⁸⁹Ibid

issues was to discover how these British Government Acts would affect the proposed Brunei Citizenship recommendations of the Tujuh Serangkai report.

Hickling considered the concepts of *jus soli* and *jus sanguini* in trying to understand who would come under the term “natural born subject” of the Sultan, and what the status was of the people of Brunei who did not fall within the seven indigenous groups as identified by the Tujuh Serangkai report⁹⁰. He mentioned in particular the difficulties the locally born Chinese were having in Malaya and anticipated that the situation would likely be similar in Brunei. Under the current status of Brunei and the laws for British Protected People the Chinese would have some rights as to nationality. However should any Brunei citizenship legislation be enacted, this would cease to be so. Hickling cautioned against shaping such legislation at this stage in Brunei’s constitutional development for two reasons⁹¹. Firstly he anticipated that the formation of such legislation would retard the possibility of a North Borneo Federation, and secondly he felt that the citizenship legislation, as recommended by the Tujuh Serangkai report, would only allow about twenty percent of the then 55 000 people in Brunei to qualify as citizens. This was a situation he thought would cause serious difficulties at a later stage.

⁹⁰ *ibid*

⁹¹ *Ibid*

In the conclusion to his discussion on Brunei citizenship, Hickling considered that citizenship legislation would prove in the future to be useful in controlling immigration, revisions of land law, the introduction of travel documents, and particularly electoral law. However the enactment of such laws in Brunei was a few years away and Hickling therefore suggested the deferral of citizenship legislation until such time as the working of the new constitution had been tested⁹². There was no urgency to frame citizenship legislation considering that the criteria for membership of District councils, (the only form of election that could possibly occur in the near future), could be defined by allowing the operation of rules that already existed.

5.5 District councils

Following the Sultan's titah in November 1953, District Councils were formally established at a meeting of the State Council in July 1954. Hickling sets out in his memorandum what the membership of the four District Councils were. He noted that the District Councils were to elect, from within their ranks, a few members to sit as observers in the State Council⁹³. This change to the composition of the State Council would become particularly important in the lead up to the written constitution of 1959.

⁹² Ibid

⁹³ Hickling Memorandum, Ibid at paragraphs 129 to 133

Rather oddly, the formal establishment of the District Councils predated the production of the Tujuh Serangkai report, which, as stated previously in this chapter, set out recommendations for the various functional elements of the District Councils such as the method of election and tenure of office.

6. Initial Negotiations: 1955 to 1957

Between 1953 and early 1955 the Tujuh Serangkai Committee prepared its report, the District Councils were set up and the Hickling Memorandum were prepared. These two years can perhaps be viewed as the period in which the Sultan and the British Government consolidated internally how they would proceed. Negotiations between the Sultan and the British Government began in earnest in 1955 following on from the recommendations of both the Tujuh Serangkai Report and the Hickling Memorandum⁹⁴.

A summary⁹⁵ of Brunei's main proposals that were brought to the British Government for negotiation were as follows: -

⁹⁴ B.A. Hussainmiya, "The Brunei Constitution of 1959: An Inside History", Brunei Press Sdn. Bhd (2000)

⁹⁵ Ranjit Singh, Supra from footnote 3 at page 136

1. all authority within the state to be vested in the Sultan's name as chief executive;
2. Brunei to continue as a British protected state, the British Resident to merely act as an advisor, i.e. essentially asking for the abolition of the advice clause contained in the 1906 treaty;
3. a Legislative Council, a Privy Council and an Executive Council to be created;
4. provision be made for elections to district councils and for the nomination of elected district councilors to the Legislative Council which would have an unofficial majority;
5. provision to be made for a clear definition of succession to the sultanate and regency powers;
6. the appointment of a First Minister or *Menteri Besar* who would take over the powers currently possessed by the Resident.

The proposals that were agreed to by the British were as follows⁹⁶:-

1. the establishment of a Legislative Council headed by the Resident as well as an agreement as to the function and composition of the Legislative Council;

⁹⁶ Ibid

2. the establishment of an Executive Council headed by the Sultan as well as agreement as to the function and composition of the Executive Council;
3. the establishment of a Privy Council also headed by the Sultan along with agreement as to the function and membership of the Privy Council;
4. the establishment of a Succession Council as well as agreement as to its function and membership;
5. principles of elections to take effect in both the Legislative and District Councils.

Additionally, the British government proposed and the Sultan agreed to the formation of a Public Services Commission and the formation of Local Councils⁹⁷.

The points of contention between the Sultan and the British Government were from the British standpoint, the abolition of the advice clause of 1906 and the creation of the post of Menteri Besar. From the Sultan's standpoint, he could not accept the reserved powers that in the proposed constitution were to be given to the High Commissioner.

⁹⁷ Ibid

High Commissioner Abell, who was negotiating with the Sultan on behalf of the British Government, recommended that the Colonial Office give two concessions to the Sultan in order to win the Sultan over, bearing in mind the wider Colonial Office aim of a possible North Borneo Federation⁹⁸. The concessions he proposed were that firstly the advice clause of 1906 be abolished in return for the Sultan's promise to "observe the provisions of the new constitution in letter and spirit and to exercise powers and authority in accordance therewith", and secondly he proposed that the administrative ties between Brunei and Sarawak be cut as he knew this to be a point of great displeasure for the Sultan⁹⁹. Neither of these concessions was acceptable to the Colonial Office. The abolition of the advice clause was unacceptable for the reason that because the British government would still be responsible for certain aspects of Bruneian governance therefore they considered the continued existence of the advice clause as vital. Another reason for their refusal of these concessions was because the Colonial Office feared that should this concession be given to Brunei it would open the floodgates for similar concessions in the Malayan states. The severance of the administrative ties between Brunei and Sarawak was seen as

⁹⁸ CO 1030/113, Secret Correspondence No. 47 from Anthony Abell to the Colonial Office, 23rd March 1955

⁹⁹ Ibid

something that should only happen after constitutional reform and therefore considered premature at this stage¹⁰⁰.

Undeterred, Abell continued to make further concessions to the Sultan by agreeing to a further dilution of the powers of the Resident and High Commissioner except in matters concerning defence, state finances, public security, external affairs and certain levels of public servants¹⁰¹. The Sultan pressed Abell for further concessions and eventually was given the power to appoint two Wazirs on all three of the main councils¹⁰². Despite all these concessions, however, the Sultan still refused to ratify the draft proposals. In the wider regional context at this point, negotiations with Brunei reached a stalemate. This was partially due to the inability to reach a consensus but primarily due to the fact that pre independence deliberations had begun in London over the issue of Malaya¹⁰³. The Colonial Office was occupied with dealing with constitutional issues surrounding their interests in the Malayan Federation, and plans for Brunei took a backseat.

¹⁰⁰ CO 1030/164, Secret Correspondence No. 77 from the Secretary of State for the colonies, 25th March 1955

¹⁰¹ B.A. Hussainmiya, *The Brunei Constitution 1959*, Supra from footnote 12 at pages 28 to 30

¹⁰² Ibid

¹⁰³ Ibid

While these negotiations were taking place between the Sultan and the High Commissioner, the PRB continued to gain in popularity¹⁰⁴. It was estimated that, by 1957, membership was approximately 16 000 out of a population of 80 000¹⁰⁵ which represented about seventy-five percent of the adult male population of Brunei. By this point the State Council had passed an enactment to form the District Councils. Despite all their nationalist fervour, the PRB did not avail themselves of this opportunity to participate in representative government. They considered this to be another colonial distraction that did not go to the heart of democratic representation, and wanted instead to be involved with national level representation¹⁰⁶.

In the State Council the introduction of the “observers” from the District Council had a rather unexpected outcome. Through the route of the District Council observers, a few educated and very vocal local teachers had gained seats on the State Council. Choosing to ignore their observer status, they used this opportunity to criticize and embarrass the British administration and essentially obstruct the operations of the State Council¹⁰⁷.

¹⁰⁴ Ranjit Singh, *supra* from footnote 3 at page 133

¹⁰⁵ CO 824/4, Brunei Annual Report 1957

¹⁰⁶ Ranjit Singh, *supra* from footnote 3

¹⁰⁷ CO 1030/113, Secret correspondence No47 From High Commissioner of Brunei to the Colonial Office, 23rd March 1955

At the beginning of 1957, four years after the Sultan's announcement that he intended to grant a Constitution, negotiations had reached a standstill. It was not until Malaysian independence in 1957 that the idea of a Constitution would start to gather momentum again¹⁰⁸.

7. Missions to London: The Raeburn Memorandum (1957 to 1959)¹⁰⁹

Despite its large following, the PRB were not given any avenues by which they could participate in or contribute to the process of negotiation for the constitution. The attitude of the Sultan at the time was neatly summarized by Singh in saying:-

"The Sultan's attitude, though benevolent, was typical of a feudal monarch. Though he wanted to introduce democratic changes, he was nevertheless suspicious of democracy itself. To him, nationalism in Brunei must come from above, led by himself and his pengirans, who were the ones who 'knew' the wishes of the people. His attitude was not unlike Plato's philosopher-king who alone knew the peoples' will and what was best for them"¹¹⁰

¹⁰⁸ B.A. Hussainmiya, *The Brunei Constitution of 1959*, Brunei Press Sdn. Bhd. (2000)

¹⁰⁹ The account in this sub section has been summarized and condensed from Chapter 5 of B.A. Hussainmiya, *The Brunei Constitution of 1959*, Brunei Press Sdn. Bhd. (2000) and B.A. Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam*, Oxford University Press (1995) at pages 165 to 172.

¹¹⁰ Ranjit Singh, *supra* from footnote 3 at page 135

Feeling that he knew what was best for the people of Brunei, the Sultan refused to get entangled in discussions with the PRB. The attitude of the Sultan towards the PRB in general, and his refusal to consult with or have representatives of the PRB participate in any of the negotiations with the British Government, infuriated the PRB and added fuel to an already acrimonious relationship¹¹¹.

Constitutional development was progressing very slowly due partly to the strategy of the Sultan of refusing to negotiate on certain points in order to extract maximum concessions. Moving at this pace, however, was causing chaos in the day-to-day administration of the country as members of the State Council, swept up in nationalist fervour, by opposing any changes and suggestions that the Resident made, made it near impossible for the Resident to run the country. The Sultan, who had had a de facto veto power at the State Council since its inception, utilized this de facto veto power in the State Council more frequently. According to a colonial office official, this exercise of power was allowed to exist because of "*the administration's natural reluctance to use its Treaty powers and compel acceptance of advice*"¹¹². The combination of these two

¹¹¹ B.A. Hussainmiya, *The Brunei Constitution of 1959: An Inside History*, Brunei Press Sdn. Bhd. (2000) at page 35

¹¹² CO 1030/658, Correspondence between Anthony Abell to W.I. J. Wallace (CO), 30th July 1958.

things caused the prestige of the Resident to decline and the Sultan's image to be bolstered.¹¹³

In mid 1957, spurred on by the Independence celebrations in Malaysia, the pace of constitutional negotiations suddenly increased. Having gained so much momentum in Brunei, the PRB were organizing their first party congress and had invited Malaysian and Singaporean activists to attend. Mindful of the increasingly difficult relationship between the PRB and the Sultan, the Resident refused entry to these activists. This action caused anger amongst the PRB supporters.¹¹⁴

Also in mid 1957, the Secretary of State for the Colonies had paid a visit to Brunei and it was known that the Sultan was planning to reciprocate. Whilst the visit of the Sultan to London was never meant to be for the purposes of finalizing the Constitution, Azahari, hoping to emulate the success of the Malayan delegation in the previous year, planned a mission to London as well, to participate in any constitutional discussion that may take place, regardless of whether he was invited or not. In preparation for this mission, the PRB engaged Walter Raeburn QC, a constitutional expert who had had

¹¹³ B.A. Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam*, Oxford University Press (1995) at pages 165 to 172

¹¹⁴ B.A. Hussainmiya, *The Brunei Constitution of 1959: An Inside History*, Brunei Press Sdn. Bhd. (2000) at page 38

some involvement in constitutional matters in Singapore, to draft a memorandum to the Colonial Office setting out the position of the PRB.¹¹⁵

Abell knew that the PRB mission to London would cause the Sultan to be completely resistant to any British proposals with regards to the constitution and, therefore, tried his best to dissuade Azahari from this mission. He emphasized to Azahari that the way forward was to work with the Sultan and not to force his way into the negotiations.¹¹⁶

The advice fell on deaf ears and the PRB mission went ahead. The reputation of Azahari however preceded him, as was seen in the correspondence between the colonial office and Abell when the Colonial Office referred to Azahari and the PRB as “*enfants terribles*”¹¹⁷.

Ultimately, both the Sultan and the PRB met with failure at the end of their visit to London.

The two main issues the Sultan hoped would be addressed were that of the reserve powers of the High Commissioner and the

¹¹⁵ B.A. Hussainmiya, Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam, Oxford University Press (1995) at page 170

¹¹⁶ B.A. Hussainmiya, The Brunei Constitution of 1959: An Inside History, Brunei Press Sdn. Bhd. (2000) at page 40

¹¹⁷ CO 1030/464, G C Whitely to Anthony Abell, Confidential correspondence dated 5th September 1957.

appointment of the Menteri Besar. The Sultan had three meetings at the Colonial Office; the first on 11th September 1957 with the Permanent Under Secretary of State for the Colonies, and on 27th and 30th September with the Secretary of State for the Colonies¹¹⁸. From these meetings it emerged that the Sultan was coaxed out of his two principal demands and on top of that was encouraged to take steps to accommodate his people's desire to participate in government. Further, the Sultan was asked to commit to the holding of district council elections, by way of secret ballot, over the traditional method of a show of hands. Finally, the Sultan was asked to consider a closer association with North Borneo and Sarawak in advancement of the Colonial Office's aim to have a North Borneo Federation. In all senses of the word, the Sultan's meetings had been a failure.

7.1. Raeburn Memorandum¹¹⁹

The Raeburn Memorandum, prepared on behalf of the PRB, contained six sections followed by a number of recommendations for the Brunei Constitution. In general the memorandum expressed the sentiments and aspirations of the PRB for Brunei. These sentiments had become so familiar, in so many parts of the world, that in

¹¹⁸ Notes for all three of these meetings which form the basis for my writing can be found at CO 1030/460

¹¹⁹ CO 1030/464, Notes of the Meeting between the Colonial office and Azahari, 26th September 1957

discussing the memorandum with the Sultan, Sir John Martin, the Permanent Under Secretary of State for the Colonies, referred to them as “the voice of 1957¹²⁰”. They were the sentiments of a people demanding to be part of the internal governance of their country.

The Memorandum detailed the membership of the PRB and claimed to be widely representative of the Brunei public. Therefore, the need for the democratisation of Brunei was urgent in order to give a voice to the illiterate and uneducated of the county. The memorandum seemed to equate democracy with effective administration and raising the standards of living for the country.

A summary of the PRB proposals for the constitution, as was forwarded by the Raeburn Memorandum, was set down in a minute¹²¹ of the Colonial Office is as follows:-

1. universal, adult, male suffrage for all Brunei citizens regardless of race;
2. a legislative assembly of 36 members, 27 elected via secret ballot with the remaining 9 nominated by the Sultan but to include two representatives of the oil company;

¹²⁰ CO 1030/460, Meeting notes from Meeting between the Sultan and Sir John Martin

¹²¹ CO 1030/ 460, Minute of C.C.Whitely dated 3rd September 1957

3. the British Resident would be the speaker of the Legislative Assembly with a casting but no original vote;
4. executive authority to be vested in the Government of the day. The Sultan would be under constitutional obligation to call upon the leader of the party commanding a majority of votes in the Assembly to form a Government and should act on his advice in approving the list of ministers to hold office;
5. the First Minister would have the duty of tendering the advice of his Government to the Sultan but only after consultation with the British Resident. Similarly the Minister for Home Affairs and the Minister for Finance would act only after consultation with the seconded officers from the Public Works Department and Treasury.

Whilst most of the proposals submitted by the Raeburn memorandum were constitutionally sound, the issue with the Memorandum, and the PRB as a whole, was the speed at which they wanted change to happen in Brunei. The British Government viewed the PRB's proposals as unrealistic in the short term as they were of the opinion that the Brunei people were not ready. While the

proposals submitted could potentially be a long-term plan for the PRB, progress needed to be made in stages¹²².

Furthermore, Azahari's mission was blighted from the beginning by procedural impropriety. He was rebuked by Sir John Martin, the Permanent Under Secretary of State for the Colonies, at the manner in which the Memorandum as submitted to the Colonial Office. The proper procedure would have been to first submit the Memorandum to the Sultan and not a direct submission to the High Commissioner. It was also impressed upon Azahari that the Colonial Office did not approve of Azahari's instruction to members of the PRB to boycott the Sultan's constitution, and that the meeting with the PRB had only been agreed to at the behest of the Sultan. The advice left to the PRB was to submit their views to the Sultan, and work within the Constitution upon its enactment to prove their fitness to play a part in state governance¹²³. The London visit was a failure for the PRB, and their popularity quickly declined on their return to Brunei.

8. Political situation in Brunei 1958

1958, the year after the missions to London by both the Sultan and the PRB, was marked by amendment after amendment of the

¹²² CO1030/464 Minutes of Meeting between PRB and Secretary of State, 30th September 1957

¹²³ Ibid

proposed constitution. Despite the missions to London ending in the favour of the Colonial Office, on the Sultan's return to Brunei, the same cycle between Abell and the Sultan continued, as was the case prior to the London meetings. The situation was, in fact, exacerbated by the fact that now proposals were also coming from the District and State Councils, both of which had by this point developed strong anti Resident sentiments¹²⁴. The proposed constitution, that was submitted to the High Commissioner, after the input from the Councils, was so far removed from the original drafts that the High Commissioner and Resident became concerned as to the possibility of ever promulgating the constitution.

It was also in 1958, that the first election to the District Council was due to take place when the Sultan was touring Europe. The infrastructure required for a secret ballot was not properly in place. However, it was anticipated that they would go ahead using traditional methods of election. Unfortunately, the elections received such widespread and vocal opposition, that they had be cancelled days before they were meant to take place. The State Council's rejection of the election was based on their belief that the British administration was trying to achieve elections without the Sultan's knowledge. The PRB's rejection was because they claimed that the manner in which the elections would take place would contravene

¹²⁴ CO 1030/462 Confidential correspondence from the High Commissioner of Brunei to the Colonial office, 4th November 1958.

democratic principles. Upon the Sultan's return, contrary to his agreement with the Colonial Office, he did not introduce any change to the method of election to the District Council¹²⁵.

By the end of 1958, with so much opposition, and amidst so much discontent from all factions, Abell felt he had no choice but to refer the matter of the proposed Brunei Constitution to the Colonial Office in London. Abell also made the decision to remove himself from these discussion, fearing that his presence would hinder any possibility of consensus as he was, at this point, regarded by many in the State Council as the principal opponent¹²⁶.

In preparation for the Constitutional Conference in London, the Sultan and State Council decided to engage their own legal advisors. Abell worked with these legal advisors to come up with a shortlist of points of contention to bring to the conference¹²⁷. The list that was eventually agreed upon was as follows¹²⁸:-

1. the proposed separation of Brunei and Sarawak;

¹²⁵ B.A. Hussainmiya, Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam, Oxford University Press (1995) at page 86 to 190

¹²⁶ CO 1030/462 Correspondence between Anthony Abell and Colonial Office, 4th November 1958.

¹²⁷ CO 1030/462 Resolutions of a Special Meeting at Istana Darul Hana Brunei, 2nd November 1958

¹²⁸ CO 1030/462 Confidential correspondence from The British Resident to the Colonial Office, 26th February 1939

2. the timing for the appointment of a *Menteri Besar*;
3. the powers of Her Majesty in respect of defence and external affairs and the reserve powers of the High Commissioner;
4. the voting rights and the question of citizenship;
5. the public service and the staffing of key posts;
6. the powers of Her Majesty and the British adviser under the Regency and Succession enactment.

9. Brunei Constitutional Conference 1959

The Brunei Constitutional Conference was held in London from 23rd March to 6th April 1959. By the end of the conference it had been agreed that the Constitution would be implemented in stages. The first stage would see the appointment of the Menteri Besar and the transfer of the functions of the British Resident to him. The second stage would involve District Council elections and the introduction of a Nationality Enactment. Both stages were due to be completed within a 2-year time frame.¹²⁹

10. Conclusion

¹²⁹ CO 1030/462- Outward telegram from the Secretary of State for the Colonies to The Acting Resident in Brunei, 6th April 1959

The form that the Constitution took at the end of the conference was a resounding triumph for the Sultan as it saw the administrative separation of Brunei from Sarawak, the abolition of the Resident, the removal of the High Commissioner's role in its entirety from the Constitution and the complete omission of British input on matters of succession and regency. The only real loss to the Sultan was that he was overruled in wanting to assume complete responsibility for internal security. The British retained the power of defence of the Sultanate completely¹³⁰. In the following chapter we shall see how this clause was to come to Brunei's aid within the first five years of the promulgation of the Constitution.

At the end of this chapter we are able to understand how the involvement of the British had inadvertently managed to transform the position of the Sultan, from a respected position with very little authority, into one with considerable power. The following chapters will examine how the Sultan exploited the circumstances, and his position, to ensure the entrenchment of the absolute monarchy in Brunei.

¹³⁰ CO 1030/462- Outward telegram from the Secretary of State for the Colonies to The Acting Resident in Brunei, 4th April 1959

Chapter Four

1. Introduction

Having described the events that led up to the promulgation of the 1959 constitution in the previous chapter, we now discuss the years immediately following the drawing up of the Constitution, up to 1979, when the first in a series of treaties granting independence to Brunei was signed.

The argument that runs through this thesis is that the building and entrenchment of the absolute monarchy in Brunei was a two-pronged process. The first part of the process was the transfer of power from the British Resident to the Sultan of Brunei in 1959, which placed a large portfolio of power in the hands of one man; the Sultan. The second part of the argument, which is what this chapter aims to show, is that the Sultan of Brunei then augmented and entrenched that power by using the opportunity presented to him in the aftermath of the Brunei Rebellion, and by propagating a useful national ideology.

This chapter discusses the two proposals for Brunei following the attainment of internal self-governance, the political climate preceding the Brunei Rebellion of 1962 with a brief description of the rebellion

itself and discusses the powers afforded to the Sultan following the declaration of emergency.

I start this chapter by taking us through the two main proposals that were considered by the British, the Sultan and the Brunei people in trying to forge a path for Brunei after the achievement of internal self-governance. These two proposals were the North Borneo Federation proposal and the Malayan Federation proposal. I will discuss the reactions of the three main parties, i.e. the British, the Sultan and the Partai Rakyat Brunei (PRB), to these proposals.

A discussion of the two proposals is important because it was the reactions of all the three parties to these proposals that contributed to the climate that fostered the eventual rebellion in Brunei in 1962. The state of emergency that Brunei entered into as a result of the rebellion in 1962 continues to this day and being under this state of emergency greatly enhances the power of the Sultan.

Having examined the two proposals, I move on to a description of the various political parties that formed in this period, as well as a description of the National Army of North Kalimantan. An account of the political parties is useful as evidence of the 1959 Constitution as a step towards a more democratic state that was overtaken by the

events of 1962, in which the National Army of North Kalimantan, under the direction of the PRB, played a significant part.

Following on from that, this chapter briefly examines the 1962 rebellion and focuses on the powers afforded to the Sultan, constitutionally, in the state of emergency that Brunei entered into. This chapter concludes with brief summaries of the Brunei- British treaties of 1971 and 1979.

A brief note on the chronology in this chapter is required at this point. The ideas and discussions for the two proposals discussed in this chapter spanned many years. In the case of the North Borneo Proposal in particular, discussions started at almost the same time as British involvement in Brunei affairs. For this reason I have chosen to deal with the two proposals first and separate to the chronological account, allowing the reader to understand the proposals in isolation before explaining the resultant politically charged atmosphere in Brunei between 1959 and 1962 which came to a head with the Brunei Rebellion of 1962.

2. The Proposals

2.1. The Northern Borneo Federation Proposal

The first mention of a possible amalgamation of British interests in North Borneo dates as far back as the 1890. However at that point, Brunei was not a British protectorate and therefore not part of the equation. The idea of amalgamation was revived again in 1931 by Cecil Clementi¹. Clementi, the Governor of the Straits Settlements, High Commissioner for the Malay States and Brunei and British Agent for Sarawak and North Borneo at the time, was of the opinion that “ ... progress and development throughout British Borneo would be greatly facilitated if its four component parts² could be drawn together in a loosely knit federation. This could be achieved without in any way altering the constitution of any one of its important parts. It would only be necessary that the four component parts should bind themselves by treaty to constitute a Federal Council”³

The proposal by Clementi was deemed premature by the Colonial Office as it was unlikely at that point that the Governments of Sarawak and North Borneo would agree to be reduced to Crown Colonies⁴. At this point Sarawak and North Borneo, like Brunei, were

¹ Clementi Papers, Clementi to Tuan Muda on 6th August 1930. Quoted in the secondary from Nicholas Tarling, ‘Sir Cecil Clementi and the Federation of British Borneo’, *JMBRAS*, 44(2), 1971, pp 1- 34.

² By 1931 when Clementi was reviving this idea Brunei was under the British sphere of protection. The four component parts he was talking about were therefore Brunei, Northern Borneo, Sarawak and Labuan.

³ Clementi Papers, *Supra* at note 1

⁴ *Ibid* at page 33

British protectorates and so legally the British did not have the jurisdiction to force federation on them.

In 1940 the idea of amalgamating the states in Borneo was revived yet again, this time supported by a Colonial Office official, J.M.Martin⁵. The difference between Martin's proposal and Clementi's proposal however, was that Martin saw Brunei as supremely important. Martin saw Brunei becoming the capital of a self-governing Borneo with the former Bruneian territories of Sarawak and North Borneo being returned to the Sultanate. Essentially, he envisioned a federation along the lines of modern day Malaysia for the states in Borneo. He, however, conceded that such a change could not be done at the time due to the weakness of the reigning Bruneian Sultan. All plans or discussions about this proposal were, however, placed on the proverbial shelf for the duration of the Second World War.

In the aftermath of World War Two the proposal was once again considered by the Colonial Office⁶. Perhaps the amenability of the British to the idea of combining the states in Borneo can be partly attributed to the fact that, since the discovery of oil in 1929, Brunei's

⁵ CO 531/29 (File 17), Memorandum by J.M.Martin, 14th February 1940.

⁶ B.A. Hussainmiya, Sultan Omar Ali Saifuddin III and Britain; The Making of Brunei Darussalam, Oxford University Press (1995) at pages 220 to 222.

economy had increased considerably. In fact, the Brunei economy had been superseding the economies of both North Borneo and Sarawak in recent years. Brunei's newfound wealth, the fact that it was not a practical option to spend Colonial funds to administer a state as small as Brunei, and also the further problem that the war had caused much damage to the infrastructure of North Borneo and Sarawak, meant that closer cooperation of the Borneo territories would be very much in the British interests⁷.

Aware of the fact that the Sultan of Brunei would need to be enticed into this proposal, C.F.C. Mackaskie, a Colonial Office official suggested the return of some of the former Brunei territories to the Sultan, to placate him into accepting the proposal⁸. The British Government however, while realizing the benefit of Brunei as the nucleus of their Borneo territories, were unwilling to even consider extending the authority of the Sultan, as they were of the opinion that the Sultan possessed no qualities which would justify such an extension⁹.

⁷ CO 537/2244, Telegram, Secret, Governor General to Colonial Office, 23rd October 1947, item 14.

⁸ CO 825/42 (55104/3/1943-4). Memorandum, Secret, Macaskie to Wodeman, 4th December 1944.

⁹ CO 825/42(55104/3/1943-4), Memorandum for Constitutional Reconstruction in thru Far East, 20th March 1943, item A.

In 1946 both Sarawak and North Borneo became Crown Colonies¹⁰. While this made it administratively easier for the concept of a “United Borneo”, because being a Crown Colony made Britain sovereign in these two states, which was the ultimate aim for the British Government¹¹, they also became aware of racial tensions within the territories. It was decided that there would be no public endorsement of the North Borneo Federation proposal for fear of encouraging opposition to the plan that was already visible from anti-cessionists¹² in Sarawak and also the Brunei Malays¹³. From their experience of native opposition to the Malayan union the British were not keen to arouse a strong opposition from the local people that could potentially derail British plans in North Borneo its entirety¹⁴. The British were also awaiting the appointment of a new Governor-General (of the Malayan Union and the new colony of Singapore) who was to advise on the viability of the proposal¹⁵.

¹⁰ CO 537/2244, Memorandum by Secretary of State for the Colonies. 24th December 1947, item 23.

¹¹ CO 1022/61, Secret, Colonial Office Paper, ‘Political Objectives in British Territories of South- East Asia’, 10th March 1953.

¹² The anti-cessionist movement in Sarawak was a movement of people who were against the idea of Sarawak becoming a Crown Colony of Britain. After Sarawak became a Crown Colony, this movement was still active in opposing British rule in Sarawak.

¹³ CO 1022/61, Secret, Colonial Office Paper, ‘Political Objectives in British Territories of South- East Asia’, 10th March 1953

¹⁴ Ibid

¹⁵ Ibid

The solution that the British Government decided on was to place Brunei administratively under Sarawak, with the Governor of Sarawak also becoming the High Commissioner for Brunei¹⁶. The British Resident in Brunei was under the authority of the High Commissioner. Unbeknownst to the British at the time, it was this decision, to place Brunei administratively under Sarawak that scuppered any plans they had to bring the North Borneo Proposal to fruition. This was because to be placed in any way under a territory that used to belong to Brunei was deeply offensive to the Sultan¹⁷.

British plans for the region were perhaps most obviously displayed by the public pronouncement of the Commissioner- General for the United Kingdom in South East Asia stating “whether this can develop into a political federation of Borneo territories, leading ultimately to the creation with Malaya of a Southeast Asian Dominion Government, is another matter, but Bornean federation is both logical and achievable in the not distant future”¹⁸.

This pronouncement was followed shortly by the “Sarawak- North Borneo- Brunei Conferences” or also known as the “Inter- Territorial

¹⁶ Ibid

¹⁷ B.A. Hussainmiya, “The Brunei Constitution of 1959: An Inside History”, Brunei Press Sdn. Bhd (2000)

¹⁸ Straits Times, 24th April 1953

Conferences”¹⁹. While the objectives of the conferences were never for the purposes of discussing a federation of the British Borneo territories they led to speculation that such a federation would be born as a result of the conferences²⁰. The Sultan of Brunei was however very quick to counter such speculation²¹.

There were a few reasons for the Sultan’s opposition to the North Borneo Federation proposal. The first reason was economic. The Sultan feared that he would have to share Brunei’s wealth with North Borneo and Sarawak. A second reason lay in the fact that the Sultan felt the placing of Brunei administratively under Sarawak to be an affront to his sovereignty. Thirdly, the Sultan had concerns that a federation would eliminate Brunei’s status as a sovereign nation. Furthermore the Sultan feared the lowering of his own status as sovereign ruler of Brunei. Lastly the Sultan feared a flood of foreigners would swamp the local Malay population of Brunei because of the higher standard of living that Brunei offered as compared to neighbouring North Borneo and Sarawak.²²

¹⁹ CO 1022/294, Minutes of the first meeting of the Sarawak- North Borneo- Brunei Conference, 21st April 1953.

²⁰ Straits Budget, 30th April 1953

²¹ Sunday Mail, 18th May 1953

²² B.A.Hussainmiya, Supra from footnote 6 at page 226.

The PRB, who emerged in 1956, found that their interests to some degree, matched that of the British Government in that they supported the idea of a combination of the territories in Borneo²³. The PRB's concept of Bruneian nationalism centered on the restoration of Brunei territorial rights in Borneo and therefore. In this respect, they found that their interest aligned with the interests of the British Government. The difference was that while the British Government wanted a federation of the Borneo states, the PRB wanted Sarawak and North Borneo to be absorbed into Brunei.

Between 1956 and 1959, the North Borneo proposal, supported heavily by the British, continued to gain momentum in Sarawak and North Borneo²⁴. The position of the Brunei Sultan however remained unchanged²⁵. The popularity of the PRB continued to grow the more the proposal was promoted by the British²⁶. The North Borneo Federation proposal suffered a serious setback with Malayan independence on 31st August 1957, for the reason that Malayan Independence was the start of the Sultan's interest in the Malayan Federation Proposal²⁷.

²³ Ranjit Singh, *Brunei 1839- 1983: The Problems of Political Survival*, Oxford University Press (1984)

²⁴ Ibid

²⁵ Hussainmiya, B A, *Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam*, Oxford University Press, (1995)

²⁶ Ranjit Singh, *Brunei 1839- 1983: The Problems of Political Survival*, Oxford University Press (1984)

²⁷ Hussainmiya, B A, *Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam*, Oxford University Press, (1995)

2.2. The Malaysian Federation Proposal

The independence of Malaya on 31st August 1957 caused the Sultan of Brunei to reassess his position with the British government. He began to gravitate towards Malaya in hopes that this would help to withstand colonial pressure to accept the North Borneo Federation Proposal. To the Sultan's mind an association with an independent nation would serve him better than an association with other colonies²⁸.

The British were not keen on Brunei's closer association with Malaya as it disrupted their plans for uniting the Borneo territories. Brunei was an important part of that plan because without the financial backing of Brunei the two other Borneo territories would become financial liabilities to the British Government²⁹.

Associations between the Brunei Sultan and the Malayan Prime Minister grew from strength to strength. Evidence for this can be found not only in the large loan given to Malaya in 1958, which did not go through the proper British channels of administration, but also

²⁸ Ibid

²⁹ D035/9950- Various correspondence between Anthony Abell and the Home Office

in the fact that the Sultan requested the presence of the Malayan Prime Minister to participate, on Brunei's behalf, in the constitutional talks that led up to the promulgation of the 1959 Constitution³⁰.

The first public pronouncement of the Malaysian Federation proposal was made by the Sultan of Selangor in 1958 with regional papers stating "since the recent visit by Malayan VIPs, the bonds between Brunei and Malaya have undoubtedly been strengthened to the extent where Brunei would like to make a public show of her desire for closer union with the Federation of Malaya"³¹.

It was in the midst of the increasingly close bonds between Malaya and Brunei that the Brunei Constitution of 1959 was promulgated. Given the Sultan's recalcitrance with regards to the North Borneo Federation and his increasing friendship with Malaya, the British Government were forced consider the idea of a Malaysian Federation union rather than the Borneo Federation that they had hoped for³² and to consider alternatives for North Borneo and Sarawak. The main problem for the British was how they would now guarantee development in the Borneo territories to the level where the British

³⁰ CO1030/608 – Various correspondence between the British Resident and the Home Office

³¹ North Borneo and Sabah Times, 10th November 1958

³² CO1030/608- E. Melville's Minute to Sir John Martin of 2nd March 1959

would be ready to give up their hold on them³³. Knowing how long they had courted the Sultan on the merits of the North Borneo proposal, with disappointingly little progress, the British decided to take a step back to allow further developments in the region without interference³⁴.

Tunku Abdul Rahman, the first Prime Minister of Malaya, had plans for a super- federation of the region that was to include not only Malaya but also Singapore and the Borneo territories³⁵. The reason for the inclusion of the Borneo territories in this equation was largely due to the balancing of racial populations. The Tunku's fear of including Singapore without the Borneo territories was that it would upset the racial balance in favour of the Chinese³⁶. It was for the same racially motivated reasons that the Sultan was more taken with joining the Malaysian Federation over the North Borneo Federation proposal. There was an increasing dislike towards the Chinese community in Brunei from the Brunei Malays, and an increasing fear of becoming a minority should the North Borneo Federation proposal

³³ Ibid

³⁴ D035/10035- Various correspondence between Malcolm McDonald and Home office

³⁵ CO 1030/608- Note of meeting between Malcolm MacDonald and Tunku Abdul Rahman, 30th December 1958

³⁶ B. Simandjuntak, *Malayan Federalism 1945- 1963: A Study of Federal Problems in a Plural Society*, Kuala Lumpur, Oxford University Press, 1969.

come to fruition³⁷. The worry was that support of the North Borneo Federation proposal would allow Chinese domination of Brunei by the large Chinese and other non-Malay population in North Borneo and Sarawak. Evidence of this need to protect the Brunei Malays can be seen in the fact that citizenship rights under the Constitution of 1959 were for a very narrow class of people that largely did not embrace the Chinese and is also seen in the racial discrimination in favour of the Malays for high-ranking official posts.

Shortly after the launching of the 1959 Constitution, plans were put into place to replace British officials in key positions with Malayan civil servants, as had been agreed between the British and the Sultan during the negotiations leading up to the 1959 Constitution³⁸. This, along with other factors such as the sending of the royal children to school in Malaya rather than to England as was originally planned and the building of a royal residence in Kuala Lumpur, added to the general feeling that the union between Brunei and the Malayan Federation was imminent. Despite all this, however, the Sultan continued to keep his cards close to his chest never specifically stating his intentions one way or the other³⁹. Contrary to the indications as listed above, the British, through one of their officials who had become close to the Sultan, had it on good authority that,

³⁷ CO 1060/462- Report on the situation in Brunei

³⁸ B.A. Hussainmiya, "The Brunei Constitution of 1959: An Inside History", Brunei Press Sdn. Bhd (2000)

³⁹ Ibid

though the Sultan intended to keep good terms with Malayan leaders, he had no intention of a federation with Malaya⁴⁰. Meanwhile the British Government were generally still weighing up the merits of this proposal over the original North Borneo Federation proposal. It was the view of Lord Selkirk, the UK Commissioner- General at the time, that the Malaysian Federation Proposal would give stability to the region and that the matter should be resolved with much haste as “the forces dividing the territories are likely to become stronger, as time passes at the same time as the cohesive factor- the imprint of British rule- becomes less marked”⁴¹.

3. Breakdown of Brunei- Malaya Relations

The efforts of Tungku Abdul Rahman, in trying to convince the Sultan of Brunei to commit to the Malayan Federation proposal, were essentially torpedoed by his remarks regarding Brunei and the Malayan Federation at an informal tea party in London in 1960⁴². Both Malayan and Bruneian students attended this event and the dialogue between the students and the Tungku was reported in the

⁴⁰ CO 1030/462, Confidential, R.E. Turnbull to W.I.J. Wallace (CO), 15th December 1959.

⁴¹ CO 1030/1126, Confidential Memorandum, Lord Selkirk to Selwyn Lloyd, 17th June 1960.

⁴² Ranjit Singh, *Supra*

media⁴³. As was the norm when speaking about the ties between Malaya and Brunei, the Tungku spoke about how Brunei looked to Malaya as a benchmark for progress and good Government, and how he looked forward to further friendly relations between Malaya and Brunei⁴⁴. This time however, he went on to say more specifically that he would soon be in talks with the Colonial Office for the purposes of making Brunei a member of the Federation and that he believed Brunei to be too small to be an independent nation or a member state in the Commonwealth. He also commented on his belief that Brunei had a bleak economic future due to the fact that the cornerstone of the Brunei economy was a non- renewable resource.

The comments made by the Tungku were used to great effect by the PRB in furthering their cause against the Malaysian Federation Proposa⁴⁵. The PRB had lost a lot of its popularity with the implementation of the Brunei Constitution of 1959 due to the fact that the Sultan, through the implementation of the Constitution, was seen to be trying to advance the country politically and increase participation in governance, although on a more measured scale. There was, however, dissatisfaction amongst the Brunei people about the presence of Malayan civil servants in government

⁴³ Borneo Bulletin, 25th June 1960

⁴⁴ DO 35/9950 Text of a broadcast made by Tungku Abdul Rahman, 10th November 1958 and also North Borneo and Sabah Times, 10th July 1959

⁴⁵ Ranjit Singh, *Supra*

positions. While the Sultan saw the Malayan officers as a necessary measure until local Bruneians had the experience to take over, the local sentiment was overwhelmingly negative against these officers. Looking to regain popularity with the Bruneian people the PRB seized the opportunity it saw in the dissatisfaction of the people and the comments made by the Tungku. The PRB claimed that the Malayan Federation proposal was a “neo colonialist” endeavour by Malaya. They furthered their own interests in the North Borneo Federation proposal by falling back on their stance of Brunei for Bruneians, and continued to insist on the claiming back of ancient Bruneian territorial rights in Borneo. The PRB started to see a return to their pre- constitution popular status⁴⁶.

The response of the Bruneian people to the announcement of Brunei entering into the Malaysian Federation by Tungku Abdul Rahman finally caused a direct comment on the matter from the Sultan. The Sultan’s denial that any negotiations had taken place between himself and the Tungku, was carried in the state media on 6th July 1960. Hussainmiya writes that the reason for the public denial of the Malayan Federation proposal was due to the fact that the proclamation for such a monumental change had come too early and the Sultan had not had ample time to prepare his people⁴⁷. Singh is of the opinion that this pronouncement by the Sultan was made out

⁴⁶ Ibid

⁴⁷ B.A. Hussainmiya, *Supra* from footnote 6 at pages 240 to 244

of a sense of national pride and an interest in preserving the political status of Brunei as a sovereign nation⁴⁸.

Regardless of the reason for the announcement, the result of it was that the announcement, combined with mounting international pressure on the British to decolonise, spurred the British Government into making a decision on how it would manage its position in the region. The resolution of the United Nations General Assembly passed in December 1960 urged “the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations”⁴⁹ which caused Whitehall to favour a speedy decolonisation process.

The British Government needed to settle the problem of Singapore, which was considered a threat to the stability of the region due to communist elements that remained there after the end of the Second World War⁵⁰. The framework provided by the Malayan Federation became the best option for the British to relinquish its responsibilities

⁴⁸ Ranjit Singh, *Brunei 1839- 1983: The Problems of Political Survival*, Singapore, Oxford University Press, 1984 at Chapter 7.

⁴⁹ The UN General Assembly 15th Regular Session, *Commonwealth Survey*, 7(11), 1961 at page 508.

⁵⁰ Mohamed Noordin Sopiee, *From Malayan Union to Singapore Separation: Political Unification in the Malaysian Region 1945- 1965*, University of Malaya, 1974 at page 133.

in the region and the Borneo territories became the bargaining chip. The British would support Malaya its quest to combine with the Borneo territories on the condition that Singapore would also be included⁵¹. British official acknowledgement of the Malaysian Federation proposal however was not forthcoming until mid June 1961⁵² and even at that point the terms under which such a merger would be acceptable were still being discussed internally by the Colonial Office.

The Tunku however, prior to British acknowledgement of their concurrence to the Malaysian Federation plan, had once again jumped the gun in his address to the Foreign Correspondents Association of South- East Asia in Singapore on 27th May 1961. A quote of his address is as follows: -

“Malaya today as a nation realizes that she cannot stand alone and in isolation... Sooner or later she should have an understanding with Britain and the peoples of Singapore, North Borneo, Brunei and Sarawak. It is premature for me to say how this closer understanding can be brought about, but it is inevitable that we should look ahead to this objective and think of a plan whereby these territories can be brought closer together in political and economic co-operation”⁵³.

⁵¹ Ibid

⁵² Answer of British Prime Minister Harold Macmillan in the British Parliament as cited in Straits Times, 21st June 1961.

⁵³ Sunday Times, 27th May 1961.

Sultan Omar Ali Saifuddin III's reaction to the Tungku's proclamation was muted, stating that any association between Brunei and Malaya would be up to the British Government by virtue of the treaty agreements between Brunei and Britain in 1959⁵⁴.

In an effort to balance the wishes of Whitehall with those of the Borneo people the Governors of the three Borneo territories met in June 1961 to consult with the Commissioner General in South East Asia on how best to move forward. Sarawak and North Borneo's sentiments were that to join the Malaysian Federation would be complicated due to the differing levels of progress between their two territories and Malaya⁵⁵. Furthermore, having been invested for so many years in the idea of a North Borneo Federation, it would take the people some time to embrace this new concept⁵⁶. Trying to straddle the interests of both Whitehall and the Borneo people, the three British officials left the consultations with the primary aim of uniting the three Borneo territories prior to and in anticipation of the Malaysian Federation proposal⁵⁷.

⁵⁴ CO 1030/1147, Sir Geofroy Tory to N. Pritchard, 5th August 1961

⁵⁵ Straits Times, 29th June 1961

⁵⁶ Borneo Bulletin, 8th July 1961

⁵⁷ James Ongkili, *The Borneo Response to Malaysia, 1961 to 1963*, Singapore, Donald Moore, 1967 at page 24.

Matters were then made more complicated by a series of events which became known as “the Officers affair”. As was noted previously in this chapter, the appointment of Malayan Civil service officers into Brunei Government jobs previously done by British officials was causing discontent amongst the Bruneian people. The feeling was very much that these Malayan officers had usurped positions that should have gone to locals. The divisions between these two groups were exacerbated by the haughty attitude of some of the Malayan officials as well as the fact that some of the Malayan officials were not capable in their work and had been given the positions over qualified Bruneians. This discontent felt by the Bruneian people, combined with inflamed local sentiments stemming from the first time the Tunngu had proclaimed the idea of the Malaysian Federation, led to some verbal attacks on Malaysians in Brunei⁵⁸. These attacks were followed by a more serious incident where two brothers of the leader of the PRB physically assaulted a Malayan State Forest Officer. Upon the settlement of the matter by a Magistrate, the officer returned to Malaya and gave press interviews sensationalizing the assault⁵⁹. Leaping to the defence of the Malayan Officer Tunngu Abdul Rahman issued public statements whilst on a state visit to Brunei. He criticized the Brunei police and other senior

⁵⁸ Borneo Bulletin 21st January 1961

⁵⁹ Straits Times, 23rd June 1961

officers and threatened to withdraw all Malayan officers⁶⁰. This incident, called “the Officers affair”, led to a mass resignation of ten Malayan officials from Brunei posts, including the two top Malayan administrators in Brunei. It also launched a series of vitriolic verbal and written exchanges contained in the national press between the PRB and the Tungku. A sample of a pamphlet produced by the PRB in this exchange stated “Let there be thousands of well equipped soldiers sent to Brunei, yet the people will smash them even with bloodshed, for the Brunei people aim to smash all forms of colonialism”⁶¹.

The Tungku’s threat to withdraw all Malayan employees from Brunei, knowing full well that it would incapacitate the administration of Brunei, was seen by some as coercion by the Tungku to get Brunei to join the Malaysian Federation⁶². The Tungku’s threats caused a breach in the relationship between Brunei and Malaya because the Sultan took offence to the threat made by the Tungku to withdraw Malayan personnel from Brunei⁶³. Despite all this bad feeling, and knowing the Sultan’s reservations on the matter⁶⁴, the Tungku, during

⁶⁰ CO 1030/1038 D.C. White, Report on the Political Situation in Brunei.

⁶¹ Ibid

⁶² Open letter to North Borneo and Sabah Times, 7th July 1961.

⁶³ CO 1030/1448

⁶⁴ CO 1030/1126- Note of discussion between Lord Perth and Tungku Abdul Rahman, 10th June 1960

his state visit to Brunei in July 1961, continued to assume the Sultan and Brunei's assent to the Malaysian Federation proposal⁶⁵.

4. Growing Political Unrest

One of the obligations imposed on Brunei, under the treaty accompanying the Constitution of 1959, was the holding of elections to the District Councils within two years of the 1959 Constitution⁶⁶. In preparing for these elections a Nationality enactment was to be drafted, with consultation of the Secretary of State for the Colonies, after which an electoral register could be drawn.

An immediate problem with this was that the High Commissioner, under the terms of the 1959 treaty, was void of any executive power and therefore could not hurry the preparation of the Nationality enactment. Additionally, in the years immediately after the 1959 Constitution the British Government chose to adopt a "wait and see" approach in its dealings with Brunei. As we have seen above, official British support for the Malaysian Federation Proposal was not forthcoming until mid 1961. Prior to that official pronouncement of support, a "wait and see" attitude was adopted not only with regard to

⁶⁵ Straits Times, 5th & 10th July 1961

⁶⁶ B.A. Hussainmiya, "The Brunei Constitution of 1959: An Inside History", Brunei Press Sdn. Bhd (2000)

Brunei's future within the region but also in the attitude with internal Brunei matters such as District elections.

Hussainmiya⁶⁷ lists four reasons for this delay in District Council elections which were: -

1. the initiative to spearhead the enactment was left to the Brunei Government, which was at that point struggling to cope with the "teething difficulties" that came with new administration;
2. the British were still discussing the viability of holding elections in Brunei;
3. the British were unsure how to cope with the conflicting interests of the Sultan and the PRB;
4. the British prioritized their own agenda which was at this stage indecision between the North Borneo Federation proposal and the Malayan Federation proposal.

Unable to decide between the merits of either the North Borneo Federation proposal or the Malaysian Federation proposal, the British used the District Council elections as a delaying tactic. They insisted that a move towards either proposal would have to wait until the

⁶⁷ B.A.Hussainmiya, Sultan Omar Ali Saifuddin III and Britain, *Supra* from footnote 6 at page 260

elections took place to allow public participation in the decision⁶⁸. They then allowed an extension on the initial time period of two years for the holding of the elections. This extension was given on the basis that Brunei lacked the maturity to deal with an electoral system at that point and any elections that took place would yield a skewed one party result due to the dominance of the PRB⁶⁹.

The postponement of District Council elections led to a mass demonstration organized by the PRB in Brunei town on 17th June 1961. The PRB demanded that elections be held post haste⁷⁰. The aggressive stance adopted by the PRB at this demonstration and the general political climate in Brunei at the time was best exemplified by the words of the leader of the PRB when he said "There is no administration in the world so weak. We urge the Government to improve things... the first time we will be patient, the second time we give warning, and the third time we give a slap"⁷¹. Another large demonstration was held in Brunei town on 6th August 1961. At this demonstration the British High Commissioner was given a petition from the leaders of the demonstration requesting that the extension

⁶⁸ CO 1030/937- Various correspondence between the Home office and Malcolm McDonald

⁶⁹ Ibid

⁷⁰ CO 1030/1147- Report on the political situation in Brunei.

⁷¹ Borneo Bulletin, 24th June 1961

be revoked (amongst various other campaign appeals) and that District Council elections should be held within the original timeline⁷².

The British High Commissioner was unable to do anything to solve the political upheaval he was witnessing in Brunei⁷³. Having been stripped of all executive power by the 1959 treaty he was unable to push forward with the Nationality Enactment which would allow elections to take place, and had no choice but to adhere to the 'wait and see' approach that the British government had chosen. The Sultan was not inclined to hurry the Nationality Enactment as he feared the popularity of the PRB would mean a large victory for them at the proposed elections.⁷⁴

5. Political Parties and Public Participation

Shortly after the British Government's acknowledgement of its interest in the Malaysian Federation proposal as discussed above, progress started to be made. In August 1961, a month after British acknowledgement, the Nationality Enactment was approved and elections were scheduled to happen before 18th October 1962⁷⁵.

⁷² Ranjit Singh, *Supra*

⁷³ *Ibid*

⁷⁴ Ranjit Singh, at pages 164- 166

⁷⁵ CO 1030/1012- Correspondence to and from the Foreign Office

Following talks with Tunjku Abdul Rahman in November 1961, a joint statement between the British and Malaya, announcing the possibility of the Malaysian Federation was issued⁷⁶. Under this joint statement a commission was to be set up to gather the popular views of Sarawak and North Borneo as well as the views of the Sultan of Brunei in this matter. This commission was called the Cobbold Commission. Open negotiations were held between the British, the Malaysians and Brunei to discuss terms under which Brunei would consider association with the Federation⁷⁷. The Sultan of Brunei then, for the first time, made a public statement describing the Malaysian Federation proposal as an attractive one that had been received favourably by the British Government, and seeking the views of the Brunei people on the matter⁷⁸. In order to gather the views of the Brunei people, the Sultan set up of Brunei- Malaysia Commission in January 1962.

1962 saw the mushrooming of political parties in Brunei as it anticipated the first District Council elections at the end of the year⁷⁹. A majority of the minor parties that formed in this period had distinctly

⁷⁶ Straits Times, 23rd November 1961

⁷⁷ CO 1020/1012- Correspondence to and from the Foreign Office

⁷⁸ Straits Times, 6th December 1961.

⁷⁹ Matassim bin Haji Jibbah, 'Political Development in Brunei with Reference to the Reign of Sultan Omar Ali Saifuddin III (1960- 1967), MA thesis, University of Hull, 1983.

pro- Malaysian Federation policies despite most of them being breakaways from the PRB.

One such party active in this period was the Brunei National Organisation (BNO)⁸⁰. The BNO was formed in November 1960 by Abdul Manan Bin Mohamed who had also been a founding member of the PRB. While initially being firmly opposed to the Malaysian Federation proposal this approximately 700 strong party was in support of the Malaysian Federation proposal because they were satisfied with the steps the Sultan was taking to ensure that the people's views were heard through the Brunei- Malaysia Commission.

Other parties that were formed along similar lines as the BNO, and had similar views were the Brunei United National Organisation (BUNO) and the Brunei United Party (BUP)⁸¹. Unable to properly get off the ground, these three parties allied to support the Malaysian Federation proposal. Despite the fact that there were more parties in support of the Federation proposal, none of them was as organized or as popular as the PRB.

⁸⁰ Ibid

⁸¹ Ibid

The Brunei United Labour Front (BULF), registered on 27th October 1960, was one of the few parties that allied itself with the PRB⁸². Formed before the mass demonstrations in 1961, the BULF had pledged to support all PRB activities⁸³ in a bid to be allied with a party who it foresaw to be the winner of any future elections.

The findings of the Brunei- Malaysia Commission were never published. Despite this however, in February 1962, Brunei signed a memorandum accepting the Malaysian Federation proposal in principal, subject to the inclusion of safeguards to protect the Borneo territories⁸⁴. The Legislative Council became an important forum for debate on this issue. It was in fact, in an address to the Legislative Council on 18th July 1962, that the Sultan shared the findings of the Brunei- Malaysia Commission⁸⁵. In summary, the address of the Sultan on this occasion stated that the general impression of the people was that they agreed in principle to the Malaysian Federation proposal. There was a belief that the advantages of increased prosperity and peace through the Malaysian Federation would outweigh any disadvantages. There was some variance of opinion as to the route to Federation, with a percentage of the results favouring a unification of the Borneo territories prior to joining the Malaysian

⁸² Ibid

⁸³ BA/2636/1983 (SUK Series 3, Box 210)

⁸⁴ Ibid

⁸⁵ Borneo Bulletin, 21st July 1962

Federation. The Sultan felt however that he required further clarification of the terms of the Federation and had dispatched a mission to Malaya to obtain this information. Of note in the Sultan's address is that he stressed that the agreement to Federation was only "in- principle" and subject to conditions being met that would be advantageous to Brunei. The Legislative council was prorogued after the July sessions of 1962 in anticipation of a Council with a different composition, returning after the upcoming elections⁸⁶.

The Cobbold Commission, as mentioned previously, was jointly commissioned by the Malayan Government and the Colonial Office to identify the sentiments of the North Borneo and Sarawakian people. This Commission also returned with results similar to that of the Brunei- Malaysian proposal and had come to the conclusion that the two other Borneo territories would be included in the Malaysian Federation⁸⁷.

The British Government and Tunjku Abdul Rahman were keen to press on with finalizing the arrangements for Brunei's entry into the Malaysian Federation before the District Council elections. They

⁸⁶ Ranjit Singh, *Supra*

⁸⁷ Report of the (Cobbold) Commission of Enquiry, North Borneo and Sarawak: Federation of Malaya, London, HMSO 1962.

feared the success of parties not amenable to the Malaysian Federation proposal gaining a foothold in the Legislative Council⁸⁸.

At the July sessions of the Legislative Council, Sultan Omar Ali Saifuddin III was given the mandate by the Legislative Council to negotiate the terms for Brunei's entry into the Malaysian Federation. The mission sent by the Sultan's government for further clarification returned with the following assurances⁸⁹:-

1. that Brunei would be accorded the same status as the other sovereign Malay states already in the Federation;
2. confirmation that ascendance to the title of Yang di-Pertuan Agong⁹⁰ was in accordance to date of accession to the throne which would make the Sultan of Brunei the next in line on expiry of the incumbent Agong's tenure;
3. that Brunei state investments, and interests from those investments, would continue to be the Brunei State property with further discussions in the future as to how Brunei would contribute economically to the Federation

⁸⁸ Ranjit Singh, *Supra*

⁸⁹ Summary of the Report of the Brunei Delegation on the Proposed Malaysia Concept- BA/14191/1978 (SUK Series 1)

⁹⁰ Leader of the Kings of the Malayan Federation

The mandate given to the Sultan to negotiate terms for Malaysian Federation caused tensions to run high within the PRB. In preparation for the elections the PRB formulated a two- pronged approach to gaining power. Should they not be able to obtain it through election, the PRB was prepared to take it through stronger means⁹¹. In the words of Haji Zaini Haji Ahmad, a founding member of the PRB, the alternative approach was through “the creation of a power vacuum by violence and once created, a revolutionary group would take over the machinery of the Government in the midst of a confused society”⁹².

With this in mind the PRB started a secret campaign for the formation of an army known as the North Kalimantan National Army (TNKU) hoping to recruit members from across the three Borneo territories. While not much information about the formation of the TNKU is available it is known that outside of Borneo, Azahari, the leader of the PRB, courted support for the TNKU from leftist groups in Indonesia, Kucing, Singapore and the Philippines⁹³.

⁹¹ Haji Zaini Haji Ahmad, *Partai Rakyat Brunei: The People’s Party of Brunei, Selected Documents/ Dokumen Terpilih*, Kuala Lumpur, Insan, 1987

⁹² Ibid

⁹³ B.A. Hussainmiya, *Supra* at footnote 6 at pages 269- 270.

6. District Council Elections⁹⁴

Brunei's first District Council elections were held in August 1962. The PRB won an overwhelming victory when they were elected into 54 out of the 55 seats available. An independent candidate who promptly joined the PRB at the end of the elections won the remaining seat. Like the systems in Sarawak and North Borneo the 55 seats in the District Council formed an electoral college from which 16 of the 33 members of the Legislative Council were elected. As a result of their landslide victory the PRB made up the elected portion of the Legislative Council in its entirety. This was not however sufficient to form the government by virtue of the 17 members nominated by the Sultan. Victory at the polls gave the PRB no more than another avenue to denounce the undemocratic nature of the Brunei constitution as the Sultan continued to hold the ultimate authority. The Sultan seemingly saw the elections as no more than a means for the people to have a voice. He did however have to be more cautious in his dealings with the Executive and Legislative councils due to the fact that there was only a slight majority in his favour.

Immediately following the elections the Sultan, having not made a concrete decision as to his position on the Malaysian Federation

⁹⁴ Account in this subsection summarised from Ranjit Singh, *Supra*

proposal, was occupied in negotiations with Malayan and British officials. On top of these negotiations the Sultan also had to keep an eye on the PRB members of the Legislative Council who were preparing to raise three motions. These motions were:-

1. rejecting the Malaysian Federation proposal;
2. requesting the return of the Brunei's ancient territorial rights over Sarawak and North Borneo and the installation of the Sultan as the Constitutional Monarch over all these territories;
3. requesting the independence of Brunei from the British Government by August of the following year.

The first session of the Legislative Council after the elections, initially set for 5th December 1962, was postponed three times. The initial postponement was called by the Speaker on the basis that the motions tabled were not within the jurisdiction of the Legislative Council. The further two postponements were made on the basis that the prerogative for summoning the Legislative Council after an election belonged to the Sultan's Government⁹⁵ i.e. the Sultan with the aid of the Executive Council. Perhaps also the practical reason for the postponements was to allow the Government time to prepare

⁹⁵ BA/2502/1983 (SUK Series 3, Box 202)

the answers to the 106 questions set to them by PRB members⁹⁶. Speculation was that the delay was so that the Malaysian Federation issue could be resolved before the sitting of the Legislative Council for fear that the Government would be defeated in an anti- merger resolution due to a rumoured defection of one of the nominated members⁹⁷. The many reasons given made no difference to the PRB who saw the postponements as an outright rejection of their motions and in the early hours of 8th December 1962 they activated the TNKU.

7. Rebellion of 1962

Whole studies have been devoted to the theories behind, the reasons for and the minute details of the rebellion of 1962. For the purposes of this research however a blow-by-blow account of the rebellion is unnecessary it is enough to know the basic facts of the outbreak. More important to this study is the aftermath of the rebellion and, in particular, the consequent impact to the constitutional powers of the Sultan when the nation is under a state of emergency.

⁹⁶ BA/13867/1978 (SUK Series 1, Box 227)

⁹⁷ Abdul Rahman Karim, Northern Borneo Nationalism, *Eastern World* 17(6), 1963

In the early hours of the 8th of December 1962, TNKU rebels descended onto Brunei town, the capital city of Brunei, from the nearby hills. They seized the highest commanding British officer and attacked the Palace, police stations and various other small coastal towns including Seria, the centre of oil production. Other than the big police stations in Brunei town, Seria and Kuala Belait, the police detachments surrendered to the rebels giving the rebels access to a considerable amount of ammunition. The Brunei Rebellion was dubbed by an American political analyst as a “teapot rebellion”⁹⁸ due to its miniscule size and lack of organization. Brunei was saved by the invocation of the treaty of 1959 to call for military help from the British Government. By the 14th of December 1962 British troops had the last vestiges of the rebellion under control. Brunei then entered into a state of emergency which exists to the present day. Some 2500 people were detained by the Brunei Police for involvement in the rebellion and the leaders of the PRB fled to the Philippines and Indonesia.

Opinion as to the level of effectiveness of the rebellion is varied. Some, such as Hussainmiya, dismissing it as “a hopelessly botched attempt by dreamy revolutionaries”⁹⁹ whereas others such as Brigadier E.D. Smith affirming it as “well considered” and potentially

⁹⁸ Gayl D. Ness, *Brunei’s Teapot Rebellion*, New York, Institute of Current World Affairs, 22nd December 1962

⁹⁹ B.A.Hussainmiya, *Supra* from footnote 6 at page 291.

successful had it been executed faster. However ineffectual the rebellion was at taking control from the Sultan there is no denying that it was an event that altered Brunei's future. Ironically Azahari's rebellion whose intention was to force Brunei onto a more democratic path is the very event which halted any potential for Brunei's democratic progress.

8. Emergency Powers

The constitutional powers given to the Sultan in an emergency can be found in Section 83(1) of the Brunei Constitution 1959 which states:-

“Whenever it appears to the Sultan that an occasion of public danger exists whereby the security or economic life of the State, or any part thereof, is threatened, whether by war or external aggression or internal disturbance, actual or threatened, he may by Proclamation (hereinafter referred to as a “Proclamation of Emergency”) declare a state of emergency either in the whole State or in such part of the State as may be specified in the Proclamation.”

Section 83 then goes on to clarify that while each proclamation of emergency cannot be in force for more than two years, the state of

emergency would continue should another proclamation be issued to that effect before the end of the first two year period¹⁰⁰.

In particular, the section of the Constitution dealing with emergency powers which provides unfettered power to the Sultan in times of emergency, is found at Section 83(3) which states:-

“When a Proclamation of Emergency has been made and so long as such Proclamation is in force, the Sultan may make any Orders whatsoever which he considers desirable in the public interest; and may prescribe penalties which may be imposed for any offence against any such Order; and may provide for the trial by any court of persons guilty of such offences”

This section provides that the Sultan can make any order when in a state of emergency so long as he deems it in the “public interest”. There is no definition of what “public interest” means, however, section 83 does then proceed to provide a non- exhaustive list of matters that could form the subject of the Orders made under this section¹⁰¹. Vitally however, the only person who has the power to decide what is in the “public interest” is the Sultan alone.

An attempt to control the power provided under these provisions in Section 83(7) which provides as follows:-

¹⁰⁰ Section 83(2) Brunei Constitution 1959

¹⁰¹ Section 83(4) (a) to 83(4)(n) Brunei Constitution 1959

“Every Order made under this section shall, at the next meeting of the Legislative Council, be laid on the table of that Council and the Legislative Council may resolve that any such Order shall, to the extent and as from such date as may be specified in such resolution, cease to have effect; and any such cessation shall, if assented to by the Sultan, have the same effect as the repeal of a written law”

This attempt to provide some measure of control seems futile because within this section it is made clear that any resolution made by the Legislative Council, deciding that any Orders made in a state of emergency should cease, would have to be assented to by the Sultan. This requirement of assent by the Sultan negates any possibility that the Legislative Council could, in any meaningful way, provide a check and balance on the powers of the Sultan in a state of emergency.

Section 83(10) states that “Every Order made in pursuance of this section and every instrument made in pursuance of any such Order, shall have effect notwithstanding inconsistent therewith contained in this Constitution or in any written law”. This subsection places Orders made under emergency, above the Constitution, because it confirms that, in the event of an inconsistency between any Orders (made while in a state of emergency) and constitutional provisions, the Orders would prevail.

The cumulative and practical effect of these sections can be seen in the aftermath of the failed Brunei rebellion of 1962. On 12th December 1962 the Sultan of Brunei, using the power afforded to him under Section 83(1) of the Brunei Constitution of 1959, proclaimed a state of emergency in Brunei as a direct response to the Brunei rebellion which had just been subdued with the help of British forces. The Emergency (Suspension of Constitution) Order 1962 dissolved the Legislative Council, allowing the Sultan to rule by decree and declared the PRB an illegal society¹⁰². The state of emergency in Brunei, which has been renewed by the Sultan continuously and regularly, has ensured that the Sultan has ruled Brunei by decree since 1962.

9. 1963 to 1967: External Pressure and Abdication of Sultan Omar Ali Saifuddin III

In July 1963 the Sultan finally decided to permanently opt out of joining the Malaysian Federation¹⁰³. The reasons for the Sultan's decision not to join the Federation were, in the end, primarily financial. No agreement could be reached on the issue of Brunei's oil

¹⁰² CO 1030/1068- Various correspondence to Secretary of State for the Colonies

¹⁰³ Hussainmiya, B A, *Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam*, Oxford University Press, (1995)

revenues. The Sultan wanted Brunei's oil revenues to remain hers in perpetuity whereas the Malaysian Federation would only allow Brunei sole ownership of the revenue for ten years after Brunei's joining of the Federation. Furthermore, the Malayan Federation wanted to impose taxes on any new oil discoveries made after joining it; a situation which the Sultan was also not agreeable to.

Other than these financial reasons, there were perhaps two other reasons for this decision. Firstly, should Brunei have joined the Federation at that point, the Sultan would have been the most junior in the ranking of the Sultans of the Malay states by virtue of the fact that Brunei was the last to join the Malaysian Federation¹⁰⁴. Secondly it may also be possible that another reason for the Sultan opting out of the Malayan Federation was due to his realisation that the Federation would insist on the establishment of a representative government in Brunei as was found in other members of the Federation. This was in fact the hope that was harboured by the political parties remaining in Brunei at the time¹⁰⁵. The establishment of a representative government in Brunei would have necessitated a decrease in the Sultan of Brunei's power as it had the Sultans of the

¹⁰⁴ Tsun Hang Tey, *Brunei's Revamped Constitution: The Sultan as Grundnorm?*, Volume 9 Issue 2, *Australian Journal of Asian Law*, August 2007.

¹⁰⁵ G. Saunders, *A History of Brunei*, Oxford University Press (1994) at chapter 9.

various states in Malaya, a fact which would not have escaped the Sultan Omar Ali Saifuddin III's notice.

With the Sultan' of Brunei's refusal to join the Malaysian Federation, any direct political pressure Malaysia could have exerted on Brunei to introduce any measure of popular government was gone (Malaysia is the name that the Malaysian Federation adopted when the other two Borneo territories and Singapore joined it)

The Sultan of Brunei was conscious, however, that a large percentage of the Brunei populace wanted a greater level of participation in governance and made concessions to this in the form of a promise to hold general elections in 1965¹⁰⁶. Negotiations between the British Government and the Sultan reconstituted the composition of the Legislative Council to 21 members, 10 of whom were to be elected. This was intended by the British Government to be an interim composition that would eventually be replaced with a 31 member Legislative Council, 20 of whom would be elected. The British Government also intended for there to be a wholly elected Cabinet. In the face of mounting international pressure to decolonise the British government wanted to hasten the development of representative institutions in Brunei. Elections were held in March 1965 and the 21 member Legislative Council was sworn in.

¹⁰⁶ Hussainmiya, B A, Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam, Oxford University Press, (1995)

Unsurprisingly, despite the fact that the PRB no longer existed, the majority of the 10 elected members of the Legislative council were former members of the PRB. A Council of Ministers was set up to replace the Executive Council which had been suspended under the state of emergency. This Council of Ministers was composed of 6 ex-officio ministers and 4 assistant minister members. As a concession to the British Government, the Sultan agreed that 2 of the 4 assistant ministers would be appointed from the elected members of the Legislative Council¹⁰⁷.

Other than pressure from the British Government, the Sultan Omar Ali Saifuddin III was also at the time facing pressure from a resurgence of political activity. Buoyed by the 1965 elections the remaining political parties merged to form the Brunei People's Independence Party (PBKR) led by a former vice-president of the PRB. The PBKR gathered momentum similar to the PRB before it¹⁰⁸.

In an attempt to quell the pressure put on him by both the British Government and the Brunei People, Sultan Omar Ali Saifuddin III abdicated the throne on 4th October 1967 in favour of his son, Sultan Hassanal Bolkiah, who is the current Sultan of Brunei. In the words of Saunders, the old Sultan "had bought the time he believed Brunei needed to transform itself into a viable independent state under a

¹⁰⁷ Ranjit Singh, *Supra* at note 31 at pages 209- 210

¹⁰⁸ *Ibid*

benign if autocratic monarchy”¹⁰⁹. The coronation of the new Sultan brought with it a cooling off period from both the British Government and the Brunei people to allow the new monarch time to settle into his role.

10. The 1971 Amendment to the Brunei Agreement of 1959

Under the new Sultan, Sultan Hassanal Bolkiah, Brunei continued to be ruled by decree. The composition of the Legislative Council was changed again to be an entirely appointed body¹¹⁰ and elections were suspended¹¹¹. Brunei reluctantly, and very much at her own pace and under her own terms, started to move towards independence.

The 1959 agreement between Brunei and the British Government was amended in 1971. This was seen as the first step in the shedding of official British control over Brunei. Under the amendment, the formal title of the British High Commissioner to Brunei was changed from “Her Majesty’s High Commissioner” to the “British High Commissioner”. This change removed from the office of the High Commissioner, the responsibility and the right to advise the

¹⁰⁹ Saunders, *Supra* from footnote 75 at page 160.

¹¹⁰ Emergency (Council of Ministers and Legislative Council) Order- 12th April 1970

¹¹¹ By the suspension of the Election (Conduct of Elections)(district Councils) Regulations 1961 and the Constitution (District and Legislative Councils) Order 1962.

Sultan on any matters concerning the government of Brunei. Brunei was reluctant to accept the 1971 Agreement, even with the prospect of this amendment. The crux of Brunei's reluctance, as gathered from correspondence between the Sultan Hassanal Bolkiah and the Foreign and Commonwealth office in 1970, was the issue of Bruneian defence¹¹². The Sultan's main concern seemed to be that Brunei should be protected from external aggression.

British reluctance in this matter seemed to be twofold¹¹³. Firstly the fact that the British Government did not want to be absolutely committed to aiding Brunei with her defence and, secondly, the British Government did not want to bear the financial burden of maintaining defence personnel in Brunei.

The amendment to the 1959 agreement in 1971 saw Brunei and the British meeting halfway in the interests of maintaining good diplomatic relations and also protecting British economic interests in Brunei. Under the amendments made in 1971, the financial burden of maintaining a military presence in Brunei would be borne by Brunei and the British Government would agree to aid Brunei in its external defence should both Brunei and the British agree that there is a need for British help upon consultation. It was also agreed that this

¹¹² FCO 24/725- Correspondence between the Sultan and the Foreign Office

¹¹³ FCO 24/2100- Internal reports and correspondence of the foreign office on the British policy towards Brunei

Agreement would lapse in 1978 when the British would withdraw all defence responsibilities and Brunei would be independent. This would allow Brunei time to build its own defence capabilities.

11. The British Brunei Treaty of 1979

In the lead up to the renegotiations of the Brunei British relationship in 1978, Brunei, ever reluctant to become independent, raised a number of issues¹¹⁴.

First and foremost the issue of defence arose again. The Brunei position was that it felt threatened by Malaysia and therefore was dragging its feet in attaining independence. The PRB, now illegal in Brunei, had set up its headquarters in Kuala Lumpur, Malaysia and had in 1975, with some measure of success, brought its issues to the Decolonisation Committee of the United Nations. Sultan Hassanal Bolkiah contended that Malaysia's aim, in aiding the PRB to attain representative government in Brunei, was so that Brunei would become part of Malaysia. Furthermore the Sultan was of the view that the idea of an independent Brunei threatened the stability of the East Malaysian states of Sarawak and Sabah as it would spur them towards trying to attain independent state status. Malaysia's

¹¹⁴ Issues summarized from various correspondence between Foreign and Commonwealth office and various personnel within South East Asia found at FCO 24/2100

response to this was that it was aiding the PRB for the reason that it considered the Brunei system an anachronism and would prefer that the PRB sought aid from a moderate Malaysia rather than other more undesirable allies. The British were of the opinion that whatever Malaysia's motives, the idea of a Malaysian "grab" of Brunei was unrealistic given the political climate in Brunei and Malaysia, though they conceded that they would through their diplomatic channels, suggest that Malaysia "cool down" in its involvement in Brunei internal affairs.

Carrying on from the issue of defence, Sultan Hassanal Bolkiah was keen to retain a British Gurkha battalion in Brunei beyond 1978. The British were against this arrangement because it could be viewed that the continued stationing of a British Gurkha battalion in Brunei would seem to sanction the autocratic nature of the Brunei Government and subject them to much international criticism¹¹⁵.

On the issue of the constitutional development of Brunei generally, it was obvious that the British had a declining interest. The British felt that while constitutional development was desirable they could not allow it to become an integral factor in any more negotiations with Brunei. This was for the simple reason that from past experiences with the previous Sultan, Sultan Omar Ali Saifuddin III, the British

¹¹⁵ Ibid

Government were fully aware that they would be given a series of open-ended promises with no prospect of ensuring implementation. There was no indication that the situation would prove to be different now and so the best outcome for the British Government would be to distance itself from the situation while ensuring a convivial diplomatic relationship and safeguarding British economic interests¹¹⁶.

Thus it came about that a new treaty was signed between Brunei and the British government on 7th January 1979 confirming that Bruneian independence would occur in 1983. This treaty signaled the slow transfer of the remaining powers the British had into Brunei hands.

12. Conclusion

This chapter has examined the important events in Brunei history from 1959 to 1979, through the eyes of the Sultan, the British and the Brunei people. These events included the proposals for the governance of Brunei; which at that point was deemed to be on the road to independence. It was the reactions to this proposal from various interested parties that invariably led to the “failed” Brunei rebellion of 1962 and the state of emergency that Brunei entered into in its aftermath. This chapter has contextualized the political climate in Brunei in the years after the failed rebellion of 1962 and allowed us

¹¹⁶ Ibid

to understand the circumstances and laws that allowed the Sultan of Brunei to consolidate his powers. It has also examined in detail, what these additional powers of the Sultan were. Finally, we looked at the treaties of 1971 and 1979 in which we see Brunei's gradual move towards Independence.

Previous chapters in this thesis have outlined the transfer of power from the British Resident to the Sultan of Brunei in 1959. This chapter shows how the Sultan effectively wielded the raft of power already given to him and multiplied it. The absolute monarchy in Brunei as we know it was built; here, and in this time frame.

Chapter 5

1. Introduction

The focus of this chapter is Brunei's political and constitutional development from 1979 to the present day. This chapter discusses issues that have had an impact on the entrenchment of the absolute monarchy as we know it in present day Brunei. Previous chapters have shown the process of how power in Brunei came to be consolidated into one office i.e. the "building" of the absolute monarchy. This chapter on the other hand aims to show the accumulation of factors in this time period that allowed the further expansion of the powers of the Sultan i.e. the entrenchment or fortification of that position.

2. Pre Independence: 1979 to 1984.

In the lead up to Bruneian independence perhaps the most significant political development was the shift in power from Sultan Omar Ali Saifuddin III (hereinafter referred to as "the Begawan") to his son the present Sultan of Brunei, Sultan Hassanal Bolkiah¹.

¹ G. Saunders, *A History of Brunei*, Oxford University Press (1994)

Referred to as “the architect of modern Brunei” for this role in shaping Brunei as a nation during his reign the Begawan had officially abdicated in favour of his son in 1967. This move by the Begawan was seen as a political move in order to ease the mounting pressure put on him by the British government for further and immediate constitutional reform² as was previously discussed in Chapter Four of this thesis. Despite his abdication however the Begawan continued to play a very important role in ruling the nation evidenced by his primary role in the negotiations leading up to the Brunei- British Treaty of 1979³.

From 1979 onwards however there was a definite shift in the balance of power between the Begawan and the Sultan. The Sultan embraced his role as the ruler of Brunei and was visibly seen to be doing so by his increased interest in state events and increased formal public appearances. In doing this the Sultan made himself more accessible and popular at grassroots level. Furthermore he took steps to strengthen and reorganize the bureaucracy of Brunei- new government departments were established, national development plans were instituted and diplomatic activity within the region was increased. By independence in 1984 the Sultan had

² Ranjit Singh, “Brunei: 1839- 1983. The Problems of Political Survival”, OUP (1984) at page 210 and Saunders “A History of Brunei” OUP (1994) at page 160.

³ Ibid

done more than enough to ensure that he undoubtedly was the ruler of Brunei in his own right.⁴

3. Proclamation of Independence

On 1st January 1984 the Sultan of Brunei made the Proclamation of Independence. The proclamation started with an invocation to God and pronounced Brunei to be in charge of all her international responsibilities and a fully sovereign nation from the date of the proclamation. It also reinforced that Brunei was never in fact a colony of the British. The proclamation confirmed that the Constitution of 1959 was the supreme law of Brunei and stated Brunei “*shall forever be a sovereign, democratic and independent Malay Islamic Monarchy based upon the teachings of Islam according to Ahli Sunnah wal- Jema’ah and based upon the principle of liberty, trust and justice and ever seeking with the guidance and blessing of Allah*”

An analysis of the text of this proclamation indicates a desire to highlight three important themes on the occasion of Brunei’s independence.

Firstly and unsurprisingly there was a definite emphasis on Brunei’s sovereignty. From the specific mention of the fact that Brunei was

⁴ Summarized from Saunders, Ibid at pages 168 to 177.

never a British colony to the express termination of all British rights and responsibilities over Brunei it is clear that the Sultan wanted to ensure there could be no question as to Brunei's status as an independent state.

Secondly the whole language of the proclamation, which was peppered with references to the Islamic faith, brought to a fore the importance of Islam in Brunei and also pointed towards the fact that one of the ways in which the Sultan sought to legitimate his rule was through the Islamic faith.

Thirdly and perhaps most interestingly were the parameters set for the future of Brunei i.e. that it would "forever be a sovereign, democratic and independent Malay Islamic Monarchy". This was the first mention of what would become the national ideology of "Melayu Islam Beraja", (hereinafter referred to as MIB) which translates into Malay Muslim Monarchy. As will be discussed later in this chapter this national ideology of MIB would in the years following independence become a vital aspect in the entrenchment of the absolute monarchy in Brunei. Also interesting to note is the fact that while democratic principles had not taken root in Brunei and were in fact actively avoided by the Sultan, democracy was specifically mentioned as a standard for Brunei's future.

4. Independence: The Early Years (1984 to 1994)

On the international front the first decade after independence saw the Sultan trying to establish Brunei's place in the international community⁵. Shortly after independence Brunei became a member of various organizations such as the Association of South East Asian Nations (ASEAN), the Organisation of Islamic Countries (OIC) and the United Nations (UN). Much time and effort were invested by the Sultan in building diplomatic relations with many countries around the world.

Seemingly the mention of democracy in the proclamation was simply to pay lip service to the expectations of newly independent nations because from independence onwards Brunei started to move towards further empowerment of the Sultan. The first example of this was seen in the form of the Emergency (Constitution) (Amendment and Suspension) Order that was passed on 13th February 1984, a mere two weeks after the proclamation of independence⁶. This Order effectively dissolved the Legislative Council (which was at that point a fully appointed body) and the suspension of Parts VI and VII of the 1959 Constitution which were the sections of the Constitution dealing with the Legislative Council generally. Considering the wholly

⁵ G. Saunders, *Supra*

⁶ All laws passed since Brunei entered into the State of Emergency in 1962 are called Emergency Orders.

appointed nature of the Legislative Council at that point and the fact that the Sultan was ruling by decree due to the powers given to him under the Constitution in a State of Emergency it is fair comment that the Legislative Council was redundant at that point and its dissolution had no practical effect. In terms of constitutionalism in Brunei though, this was a resounding rejection of constitutional principles and made very clear Brunei's intentions not to place any emphasis on any ideas of representative government.

Upon independence in 1984 the Sultan announced the setting up of a fully appointed Cabinet of Ministers⁷. This Cabinet consisted of the Sultan who was the Prime Minister, the Finance Minister and also the Minister for Home Affairs. The Begawan was made Defence Minister. Two of the Sultan's brothers were made Foreign Affairs Minister and Minister for Culture, Youth and Sports. Three other Brunei Malays who had managed to gain some experience in government prior to independence were also elevated to ministerial positions. The Sultan's brothers were bestowed with traditional high- ranking titles from Brunei's past. The presence of so many royals in the Cabinet and also the reintroduction of traditional titles seemed to signify that the royal family would play a significant role in government in post

⁷ G. Saunders, *Supra*

independence Brunei. Indeed one scholar remarked that Brunei's government was "ministerial in form but royal in essence"⁸.

1986 saw the death of the Begawan. This was a politically significant moment as though the Begawan had abdicated in favour of his son he still found his decreasing role in Brunei's governance difficult to come to terms with. This caused tension between the Begawan and the Sultan when there were differences in opinion between the two as to the governance of the country. This tension was evident to the general populace. The passing of the Begawan relieved this tension and was the last step in the "cutting of the apron strings" between the Sultan and the Begawan⁹. Evidence of this can be seen in the fact that the Sultan officially mourned the loss of his father and announced his new Cabinet in the same speech¹⁰. It is noteworthy that despite the change in the personnel in the Cabinet and the increase in the number of ministries the composition of the cabinet was not altered. It was still filled with a mix of royals and western trained technocrats, all of whom were appointed by the Sultan.

⁸ Ranjit Singh, *Supra* from footnote 1 at page 176

⁹ *Ibid*

¹⁰ G. Saunders, *Supra* from footnote 1 at pages 183 to 185.

4.1. Political Parties

Political parties did not flourish in post independence Brunei. While political parties in general were not illegal (with the exception of the PRB after the 1962 revolt) Brunei certainly did not provide an environment that would nurture the growth of any political parties and therefore the growth of democracy. The short-lived history of the Brunei National Democratic Party (BNDP) and Brunei National Solidarity Party (BNSP) exemplifies the restrictive environment in which political parties in Brunei were allowed to exist¹¹.

4.1.1. Brunei National Democratic Party (BNDP)

The BNDP was registered in May 1985. Membership of this party was restricted to Brunei Malays by the party and its main platforms of contention were the call for democratic reform and the end of Emergency rule in Brunei. A few months after the registration of the BNDP the Government banned government servants from joining political parties. This was a problem for the BNDP because most Brunei Malays at the time were government servants and therefore the ban of government servants severely curtailed party membership.

¹¹ History of two parties summarized from Saunders, *Supra* from footnote 1 at pages 185 to 187.

The leaders of the BNDP frequently travelled to neighbouring countries and received much publicity for their criticism of the Sultan and his government. The leaders were arrested in 1988 on accusations of association with the Pacific Democratic Union¹² and of sending delegations to foreign countries without Government approval. The BNDP's registration as an association was subsequently revoked by the Brunei Government.

4.1.2. Brunei National Solidarity Party (BNSP)

The BNSP was a breakaway from the BNDP. It aimed to be more inclusive, not restricting their membership to Brunei Malays and in fact espoused tolerance of other races and religions. The BNSP was supportive of the concept of MIB. The BNSP was much less popular than the BNDP indicating perhaps a desire in the general populace to be more involved in the governance of Brunei. The chairman of the BNSP resigned in 1988 due to the low membership of the party.

The brief life and popularity of the BNDP and the history of the PRB as compared to the BNSP indicated that public political sentiment at this point in Brunei's development was likely to be critical of the status quo as it seemed that the political parties that garnered the

¹² A member of the International Democratic Union that is an organization that believes that countries can only develop fully if they heed the ideals of liberal democracy, freedom of the individual and a free competitive economy.

most support were those that were interested in a move towards more democratic ideals and representative government.

4.2 Melayu Islam Beraja or Malay Islamic Monarchy (MIB)

Formalised by the Sultan in 1984, the individual concepts that make up MIB had been sowed into the Bruneian mentality for many years¹³. An example of this can be seen by the dominance of the Malay culture, the enshrining of the Islamic religion and the codification of the supreme authority of the Sultan in the framing of the 1959 Constitution. Prior to 1984 however all these factors had been separate ideals that were upheld by the Sultan and therefore the Brunei Government. The death of the Begawan and the relatively new independence of Brunei saw the Sultan looking to “nation build” and in search of a unifying ideology¹⁴. MIB was the chosen vehicle to provide a national identity the aims of which were “to shape the thinking of all Bruneians, particularly the young, and to justify the role of the Sultan as guardian and protector of Islamic principles and Malay culture”¹⁵.

¹³ Black, A, Ideology and law: the impact of the MIB ideology on law and dispute resolution in the sultanate of Brunei Darussalam, *Asian Journal of Comparative Law*, Jan, 2008, Vol.3(1)

¹⁴ G. Saunders, *Supra*

¹⁵ *Far Eastern Economic Review 1993 Yearbook*: 89

In July 1990 MIB was officially announced the state ideology. From 1990 onwards the concept of MIB was refined and propagated to the population by the Government in order to shape the manner of thinking of all Bruneians. The Sultan was portrayed as a guardian of Islamic principles and the protector of Malay culture. Slowly there began a drift in Brunei towards more conservative Muslim values. An example of this is seen in the fact that it is in the first decade after independence that Brunei became a 'dry' country. Dress codes were implemented in schools and government offices that conformed to the Islamic idea of modesty. Civil servants were given free passage to Mecca to allow them to do a pilgrimage upon the completion of 10 years in government service. These examples amongst many others show the slow move Brunei was starting to make towards Islamic conservatism that continued into the second decade after independence and indeed continues to the present day. To date MIB has infiltrated almost all aspects of Brunei life including court reforms¹⁶, school curriculums¹⁷, national defence¹⁸, economic

¹⁶ The Syariah Penal Code is currently being drafted and Brunei hopes to implement this in 2016. It is anticipated that this would cause many changes in the current court processes because Brunei courts currently operate on a common law system

¹⁷ Since 1991, MIB is a compulsory subject in all schools and universities in Brunei

¹⁸ Sulaiman, Ayu & Lim, Jock, "Armed Forces Unveil Vision" Borneo Bulletin (12 May 2001); "Call for Cooperation and Sincerity in the Military", online:

<www.brudirect.com/DailyInfo/News/Mar01/310301/rtb04.htm

policy¹⁹, administrative procedures²⁰, dress requirements²¹ and home design²².

5. 1994 to 2004: The second decade after independence²³

The second decade after independence saw a series of gestures that seemed to indicate a possible movement towards a more representative government.

In the Sultan's speech commemorating the 10th anniversary of Brunei independence in 1994 he announced his intentions for a review of the 1959 Constitution. The aim of this review was to increase political public participation via the medium of a Legislative Council. Despite this speech and the setting up of a committee to carry out this review there was no further action taken.

In 1995, after a period of dormancy, the BNSP was given permission to hold its first national assembly. At this assembly the party elected a president who was a former political detainee after the 1962 revolt.

¹⁹ Anwar, MK, "Brunei's Capital Market Vision" Borneo Bulletin (15 March 2006)

²⁰ Malai Hassan Othman & Laila Rahman, "Islamic Strategy to Reform Administration" Borneo Bulletin (4 May 2001).

²¹ Dress Codes that follow Islamic principles have been implemented in all Government Institutions and schools

²² Hussin, Haji, "Islamic Values prevail in Brunei House" Borneo Bulletin (5 August 2005)

²³ Subsection summarized from Saunders, *Supra* from footnote 1 at chapter 13.

The resurgence of the BNSP was however short lived as the president was reminded that due to his status as a former political detainee he required permission from the ministry of Home Affairs to engage in political activity. This permission was not forthcoming and so leaderless yet again the BNSP returned to dormancy.

1996 saw the release from detention of a small group of political detainees from the 1962 revolt. That same year the Sultan again ordered a constitutional review. This review proceeded with little haste and little public interest.

1999 saw the reform of “Consultative Councils”. These councils, originally formed in 1992, were set up with the aim to create a conduit between the Government and the people. Membership and management of these Consultative Councils were however complicated and overly bureaucratic making it difficult for the people to use the councils for the purpose of airing their views. The appointed nature of the consultative council caused them to operate like offices of civil servants and so they ultimately failed in their aim of being a more accessible way for the public voice to be heard.

MIB as the state ideology continued to bloom in this period. It was taught as a compulsory subject in all educational institutions, used as the ethos to which all government offices aspired to and was also

promoted as the overriding objective at all state events. Whilst the Monarchy remained the central pillar of MIB, and therefore of Bruneian statehood, this period saw the increasing importance of Islam in Brunei. Interestingly, the role of the Sultan as guardian and protector of Islamic principles under MIB while initially envisaged to provide legitimacy to the Sultan's rule and to check the development of Islamic fundamentalism, has subsequently become the vehicle for conservative Islamic values. It was under the auspices of MIB that conversions to Islam started to receive national media publicity. While there was no pressure to convert, there were enticements into conversion such as welfare payments²⁴ and housing benefits²⁵ to the new converts. Islamic days of importance were observed as national holidays, a large number of mosques were built and the National Quran Reading Championships started to become a major annual event. Despite the increasing Islamic conservatism however, Brunei remained tolerant and Islamic fundamentalism was not an issue. An obvious side effect of MIB was that the Chinese population of Brunei however started to emigrate out of Brunei because the emphasis on the Malay race as part of MIB meant that Chinese citizens were not

²⁴ Bernstein, Jay, "The Deculturation of the Brunei Dusun" [Bernstein] in Winzeler, Robert L, *Indigenous Peoples and the State: Politics, Land, and Ethnicity in the Malayan Peninsula and Borneo* (USA: Yale University Southeast Asian Studies, 1997)

²⁵ Zaide, Haji Mohd Damit, Haji, *Six Muslim Converts to get Special Houses*, *Borneo Bulletin* (5 August 2005)

always given the same rights as their Malay counterparts²⁶. The Monarchy continued to be celebrated with annual festivals and processions to mark the Sultan's birthday. These traditional ceremonies and banquets were opulent and resplendent with royal paraphernalia all symbolizing the supremacy of the Sultan.

By the end of the second decade after independence Brunei has acquired the status of "developed nation" and was internationally and internally stable with the Sultan firmly at the helm of the country.

6. Constitutional Amendments 2004

Ten years after the first mention of Constitutional reform by the Sultan the subject was brought up again in 2004. There was no trigger for this sudden interest in reform other than perhaps an understanding that an absolute monarchy in the 21st century was an anachronism and a desire to preempt any public call for greater representation. This time, unlike in 1994, the Sultan's speech was followed swiftly by a raft of constitutional reforms.

In the Sultan's speech on 15th July 2004, on the occasion of his 58th birthday, the Sultan requested that constitutional reforms be made to increase levels of political participation in the country. Within four

²⁶ Bujang, Abdul Ghani, "Education for Nationhood" (1987) 24 Southeast Asian J. of Education Studies, 39 at 43

weeks of this speech the suspension of parts VI and VII of the Constitution relating to the Legislative council, put in place shortly after independence, was lifted pursuant to the Constitution (Amendment and Suspension) (Amendment) Order 2004. A mere four weeks after the lifting of the suspension, on 25th September 2004, the Legislative Council was reinstated.

The Legislative council that was reinstated was a completely appointed body. It was made up of 21 members- 6 ex- officio, five official and ten nominated members. This Legislative Council was then dissolved on 1st September 2005, and reconvened the day after with a new set of members now totaling 29 people, all of whom were appointed by the Sultan.

I will now proceed to highlight the changes to the 1959 constitution that were made in 2004, focusing in particular on the constitutional changes that enhance the already substantial powers of the Sultan. For ease of reference in the rest of this chapter the 1959 constitution shall referred to as “the old constitution”.

6.1. Executive Authority

The amendments clarified, expanded and consolidated the executive authority of the Sultan. Section 4 (1A) named the Sultan the Prime

Minister, Section 4 (1B) made the Sultan the Supreme Commander of the armed forces and Section 4(1) and 4 (2) clearly vested supreme executive authority in the Sultan. All mention of the position of “Menteri Besar” or “Chief Minister” was removed from the constitution. This was a significant departure from the old constitution because under the old constitution the position of “Menteri Besar” was intended to be the office that would hold executive power in the country under the Sultan. The abolition of this post indicates the intention that executive power in Brunei would never be shared or delegated to another office.

Section 4(3) which reads “ His Majesty the Sultan and Yang Di-Pertuan may appoint from among citizens of Brunei Darussalam any number of Ministers and Deputy Ministers who shall be responsible solely to His Majesty the Sultan and Yang Di- Pertuan for the exercise of executive authority and who shall assist and advise His Majesty the Sultan and Yang Di- Pertuan in the discharge of His Majesty the Sultan and Yang Di- Pertuan’s executive authority” empowers the Sultan to define the scope of delegated executive power and choose to whom that delegated power shall be bestowed upon.

Section 4(5) constitutionalised the racial and religious discrimination against non- Malay - Muslim citizens for ministerial positions unless

otherwise decided by the Sultan by stating “the appointment of Ministers and Deputy Ministers shall be made from among the Malay race professing the Islamic Religion, save where His Majesty the Sultan and Yang Di- Pertuan otherwise decides.”

Section 4(6) states “The Ministers and Deputy Ministers shall be appointed by His Majesty the Sultan and Yang Di- Pertuan by Instrument under His Sign Manual and the State Seal and shall hold office for a period of 5 years or such other period, and on such terms as His Majesty the Sultan and Yang Di- Pertuan may determine, and the same persons may be reappointed, when such appointment expires, for a further period as specified in the Instrument appointing him: Provided that His Majesty the Sultan and Yang Di- Pertuan may revoke the appointment of any Minister or Deputy Minister at any time without showing cause”. This section allows the Sultan to make appointments to Ministerial positions for any number of years as is suitable to him and allows him to revoke appointments at will. The absence of security of tenure and administrative safeguards on the Sultan’s authority further entrench the monarchy in Brunei.

By virtue of Section 19 which states “His Majesty the Sultan and Yang Di- Pertuan is not bound to act in accordance with the advice of the Council of Ministers...” the Sultan was given the power to ignore advice given to him by his council of ministers. In Section 19 A which

states “No decision of the Council of Ministers shall be valid unless approved by His Majesty the Sultan and Yang Di- Pertuan” takes the ability of the Sultan to act against the advice of his Council of Ministers one step further by confirming that decisions taken by the Council of Ministers would only be valid with the assent of the Sultan. Clearly the advice and decisions of the Council of Ministers were only meant to guide the Sultan and not meant to in any way to divest him of any executive power.

6.2. The Legislative Council

Section 24 of the old constitution dealt with the composition of the Legislative Council. Under the old constitution this was to be a twenty- one member body consisting of six ex- officio members, five official members and ten nominated members. Under the amendments, section 24 now attaches a schedule that details the new composition of the Legislative Council. The new Legislative Council is now an up to forty- five member body. Thirty members are to be appointed by the Sultan and up to fifteen are to be elected district representatives. It is worth noting that despite this provision for elected district representatives there have been no public elections in Brunei since 1965.

This new schedule with respect to the composition of the Legislative Council is however rendered relatively meaningless by two clauses.

The first clause is section 24(2) which states that “His Majesty the Sultan and Yang Di- Pertuan may by Order published in the Gazette add to, revoke or amend the provisions of the Second Schedule”.

This simply means that the Sultan has the power to alter the composition and membership of the Legislative Council at will and very easily. The second clause that renders the Legislative Council ineffective can be found in Section 8 (1) of the second schedule which says “His Majesty the Sultan and Yang- Di Pertuan shall have the absolute discretion to proclaim that the Legislative council is or has been properly and validly constituted, notwithstanding that no Members have been appointed under...(various provisions in the schedule)”. This provision essentially states that despite a codified method of appointment to the Legislative Council, any Legislative Council can be validly constituted despite not following the provisions in the schedule so long as the Sultan deems it so. The ability to decide who sits on the Legislative Council places legislative authority in Brunei even more firmly in the hands of the Sultan.

Disloyalty or disaffection towards the Sultan was made a reason for the disqualification of members of the Legislative council under the amended Section 30 (a) which reads “No person shall be a qualified to be a Member of the Legislative Council who is, due to his own act,

under any acknowledgement of allegiance, obedience or loyalty to a power or state outside Brunei Darussalam, or has voluntarily acquired the citizenship of or has exercised rights of citizenship in a foreign country, or has shown himself by act or speech to have the intent to be disloyal or disaffected towards His Majesty the Sultan and Yang Di- Pertuan”

Section 39 of the old constitution read “It shall be lawful for the Sultan, with the advice and consent of the Legislative Council, and subject to the provisions of this Constitution, to make laws for the peace, order and good government of the State”. The Legislative Council of Brunei was never a powerful institution. Under section 39 of the old constitution however while the Sultan was given the power to make laws, such laws would be on the advice and consent of the Legislative Council. By the amendments made in 2004 even this small nod to a check and balance on the Sultan’s legislative power was taken away. The current version of Section 39 does away with any reference to the Legislative Council and reads “His Majesty the Sultan and Yang- Di- Pertuan shall have the power to make laws for the peace, order, security and good government of Brunei Darussalam”

Section 43 in the original constitution dealt with voting rights in the Legislative Council. The amendments in 2004 inserted further sub

clauses into section 43 to the effect that should a bill be put to a vote by the Legislative Council and be rejected i.e. become a negative resolution, the Sultan as per the new section 43(5) would still have the power to declare that the bill would come into effect. This is further evidence of the decreasing authority of the Legislative Council. It is arguable that the effect of Section 43(5) is in the end rather duplicative because Section 39, as discussed above, has clearly given the Sultan supreme power of legislation already.

The reserved powers of the Sultan to legislate under section 47 of the old constitution were also widened. Section 47 after the reforms of 2004 reads "If His Majesty the Sultan and Yang Di- Pertuan shall consider that it is expedient in the interests of public order, good faith or good government of Brunei Darussalam, (or for any other reason whatsoever), that any Bill introduced, or any motion, petition or business proposed in the Legislative Council shall have effect, then if that Council shall fail to pass that Bill or carry that motion, petition or business within such time and in such form or manner as His Majesty the Sultan and Yang Di- Pertuan may think reasonable and expedient, his Majesty the Sultan and Yang Di- Pertuan may, at any time, notwithstanding any provision of this constitution or the Standing Orders, declare that that Bill or motion, petition or business shall have effect as if it had been passed or carried by that Council either in the form in which it was so introduced or proposed or with

such amendments that His Majesty the Sultan and Yang Di –
Pertuan shall think fit...” . The amendment in 2004 inserted the
bracketed portion into the section and in so doing extending the
already extensive reserved powers of the Sultan to unfettered
reserved power to legislate. Again, in light of Section 39 as
previously discussed, in practice it seems that the powers afforded to
the Sultan in this section are duplicative.

Section 53 of the old constitution dealt with the freedom of
expression within the Legislative Council. Under the amendments
this freedom was restricted by the insertion of Section 53 (1A) which
states:-

“No member of the Legislative Council shall speak or make any
comments:

- (a) directly or indirectly derogatory of the rights, status,
position, powers, privileges, sovereignty or prerogatives of
His Majesty the Sultan and Yang Di- Pertuan, his
successors, His consort or other members of the Royal
Family or the National Philosophy of Malay Islamic
Monarchy; or
- (b) which constitute an offence under the Sedition Act”

Under the above amendment matters involving the Royal Family and
MIB were placed beyond discussion and the scrutiny of the
Legislative Council. With this section the curtailment of the freedom
of expression with regards to the monarchy and MIB is tantamount to

a curtailment of discussion with respect to the governance of the country because the ruler and his ideology for rule are not matters open for discussion. Freedom of expression is a parliamentary privilege as it provides a check and balance on the government. This section shackles the Legislative Council from performing one of its basic functions.

6.3. The State of Emergency

An additional clause was inserted in the form of Section 83 (2A) which reads “His Majesty the Sultan and Yang Di- Pertuan may by another such Proclamation declare the cessation of a state of emergency in the whole of Brunei Darussalam or in such part of Brunei Darussalam as may be specified in the Proclamation before the end of 2 years”. This section which gives the Sultan the power to cease the State of Emergency via a Proclamation at any point in time essentially also gives the Sultan the ability to decide whether or not he should continue to have the large portfolio of power afforded to him in a State of Emergency.

Section 83 A (1) reads “It is hereby declared for the avoidance of doubt that every existing law including-... (b) each and every Order, Instrument, Act, Enactment or other written law made under Article 83 during any such period of emergency, shall be deemed to have

been validly passed or made, to be fully effectual and to have had full force and effect from the date on which such Proclamation, Order, Instrument, Act, Enactment or other written law was declared or made even if such Proclamation, Order, Instrument, Act, Enactment or other written law was inconsistent with any provision of this Constitution; and the said Proclamation, Order, Instrument, Act, Enactment or other written law referred to in paragraphs (a) and (b) shall be deemed to have been duly laid before and passed by the Legislative Council in accordance with Clause (7) of Article 83”

This section was essentially a “mopping up” clause that confirmed the validity of any written law that was made by the Sultan during the State of Emergency. The said written laws would be deemed to be validly passed as if they had been laid before the Legislative Council as is the procedure when not in a State of Emergency. On the one hand this could be seen as a clause introduced for purely administrative reasons i.e. so that there would be no need for all the laws since 1962 to go through the normal procedure when Brunei eventually stops being in a State of Emergency as to do so would cause a definite backlog in legislation in Brunei. It is more likely however that this clause was passed so that the laws passed by the Sultan would be above questioning and scrutiny. Another interesting thing to note is that by virtue of this section, in the case of any

inconsistency, the Constitution is subservient to laws passed by the Sultan in this State of Emergency.

6.4. Amendment of the Constitution

Section 84(2) of the amended Constitution was rewritten to ensure that there would be no ambiguity in the fact of the Sultan's supremacy over the constitution, his powers to make laws and amend the Constitution as he sees fit.

Under the old constitution, any amendment or revocation of any part of the Constitution by the Sultan would have to be approved by a resolution of the Legislative Council. Upon amendment and insertion of extra clauses the situation now is that the purpose of laying of any amendments before the Legislative Council is simply to see if they would recommend any amendments²⁷. Should the Legislative Council recommend any amendments to the proposed changes a written report should be given to the Sultan as stated in Section 85(4) of the amended Constitution. The Sultan is however under no obligation to accept any of the changes proposed by the Legislative Council and has the last say on the final form of the amendment²⁸.

6.5. Immunity

²⁷ Section 85(3) of the amended constitution.

²⁸ Section 85 (5) of the amended constitution.

Whereas the old constitution did not provide the Sultan immunity against civil and criminal proceedings, Section 84B (1) of the amendments state “His Majesty the Sultan and Yang Di- Pertuan can do no wrong in either his personal or any official capacity. His Majesty the Sultan and Yang Di- Pertuan shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to have been done by him during or after his reign in either his personal or any official capacity”

To supplement the Constitutional immunity that was afforded to the Sultan under the Constitutional amendments of 2004, a slew of legislative amendments were made to the Supreme Court Act at the same time with the aim of protecting the Sultan from the embarrassment of exposure in the courts. An example of this can be seen in Section 15(4) of the Supreme Court Act (Amendment) Order 2004 which reads:-

“ Whenever any party or the Supreme court in any proceedings or any part thereof-

(a) makes a reference, whether orally or in writing, directly or indirectly, to any act, decision, grant, revocation or suspension or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion of His Majesty the Sultan and Yang Di- Pertuan or

(b) intends to refer to any issue or matter that may directly or indirectly pertain to or concern the inviolability, sanctity or interests of the position, dignity, standing, honour, eminence or sovereignty of His Majesty the Sultan and Yang Di-Pertuan,
the Supreme Court shall hold such proceedings or such part thereof *in camera*”

In the same vein, the Sultan is also given to power to order the hearing of any court proceedings *in camera*²⁹ and to decide on the venue and time of court proceedings³⁰. Under these amendments power is also given to the Sultan to seal any court materials or proceedings that may portray the Sultan in a bad light³¹.

6.6. Judicial review

The old constitution made no mention of judicial review however the amendments inserted Section 84C into the Constitution which reads as follows:-

“(1) The remedy of judicial review is and shall not be available in Brunei Darussalam.

(2) For the avoidance of doubt, there is and shall be no judicial review in any court of any act, decision, grant, revocation or

²⁹ Section 15(5) Supreme Court Act (Amendment) Order 2004

³⁰ Section 15(6) Supreme Court Act (Amendment) Order 2004

³¹ Section 15(8) Supreme Court Act (Amendment) Order 2004

suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion by His Majesty the Sultan and Yang Di- Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function, under the provisions of this Constitution or any written law or otherwise, including any question relating to compliance with any procedural requirement governing such act or decision”

In short, no decision of the Sultan is open for questioning by the courts.

Since the amendments to the constitution made in 2004 there have been no further constitutional changes. Indeed there would seem to be no need for further constitutional reforms as far as the Sultan is concerned as the amendments made in 2004 essentially provided the Sultan with unfettered legislative and executive authority and removed the last vestiges of checks and balances, no matter how weak and indirect, that were in the political system from Brunei’s British past.

7. Brunei today

Brunei, today is an absolute monarchy with a written constitution which is nothing more than a written account of the Sultan’s powers. The written Constitution of Brunei is intolerant of and does not support the growth of normal constitutional norms and ideals in any

way shape or form. The Sultan is both the head of state and the head of government. The Sultan himself holds the posts of Prime Minister, Minister of Defence, Minister of Finance and Minister of Foreign Affairs and Trade. As head of the executive, the Sultan is assisted by four councils. Members of these councils are entirely appointed by the Sultan. The four councils are: -

- i. The Privy Council
Advises the Sultan on matters of Malay Custom, the grant of the plea of mercy and also on the amendment or revocation of constitutional provisions.
- ii. the Council of Succession
advises only on issues of succession
- iii. the religious council
advises the Sultan on all Islamic matters
- iv. the council of ministers
also called the Cabinet. The council of ministers is made up of the Sultan himself, twelve other government ministers, eight deputy ministers and two other advisors. The cabinet is entirely appointed by the Sultan. The function of the council of ministers is to advise the Sultan on matters concerning the daily administration of the government.

The Legislative Council forms the legislative branch of the Brunei government. It is made up of 36 members appointed by the Sultan. Its function is to consult on matters as tabled in an agenda made by the government.

The Judiciary of Brunei operates on a dual system. Due to its British heritage, Brunei works on a common law system for most matters. The Syariah legal system is predominantly used in matters of family law for Muslims. In 2013 the Sultan announced the introduction of a new Syariah Penal Code. Originally due to come into force in the first quarter of 2014, the Syariah Penal Code, while it has been drafted, had not actually been put into operation³². It is unclear at this juncture how this would affect the judicial structure of Brunei. It is also unclear at this point if the delay in the implementation of the Syariah Penal Code in Brunei has anything to do with the raft of international criticism Brunei found herself subjected to when it was announced that a Syariah Penal Code would be adopted.

Further, there is no system of judicial review and appeals to the Privy Council are now only done in very specified civil law cases. While the constitution does not provide for the independence of the judiciary

³² The Syariah Penal Code is not discussed in further detail and international criticism on it is not dealt with in this work because it is felt that doing so does not have direct impact on the central argument this thesis seeks to prove. The adoption of the proposed penal code does not in any way enshrine the monarchy but rather is a byproduct of the absolute nature of the monarchy

and the Sultan is not seen to be interfering with the judicial process, as all governmental institutions operate under the national ideology of MIB, in reality all decisions of the judiciary while dictated by sentencing guidelines under common law, will also take the tenets of MIB into account.

This same adherence to MIB is seen across the board with all aspects of Bruneian life. Dissension with respect to any governmental policy is never made public as this would be seen to be going against MIB and therefore not allowed constitutionally.

In essence, due to a successful implementation of the national ideology, Constitutionalism did not take root in Brunei.

8. Other Factors

The British involvement in Brunei and the Sultan were undoubtedly two of the most important reasons for Brunei's exceptionalism in refusing to allow democratic ideals to take root. Brunei's ability to continue to resist democracy however may also be dependent on a few other factors. While by no means a closed list, the following factors are a postulation of what other factors exist in Brunei that will likely allow a continuation of the status quo for the foreseeable future.

8.1. Political parties

The suppression of political parties is something that cannot be ignored as a factor in resisting democracy in Brunei. The stark contrast between the political system in neighbouring Malaysia with that in Brunei is a prime example of this. Brunei and Malaysia share a history of Malay Sultans and a residential system. What then explains the difference in how these two countries are currently governed? It would be a gross oversimplification to say that Brunei is not democratic like Malaysia due to the existence of robust political parties in Malaysia as compared to the suppression of political parties in Brunei after the rebellion of 1962. However the fact remains that the suppression of political parties was not something that Malaysia had to contend with and it would be naïve to assume that this was not a vital reason for the difference. Political parties have been at the forefront of governmental change globally and historically. Brunei continues to foster a climate that is not welcoming to the existence and growth of political parties and therefore this factor will continue to allow the supremacy of the absolute monarch.

8.2. Malay dominance

The population of Brunei being approximately 80 percent Malay, the constitutional dominance of the Malay race as enshrined in the Constitution of Brunei and upheld by MIB ensures that the majority of the Brunei people are satisfied with the rights given to them. It is my contention that for as long as the majority racial composition of Brunei correlates with the ideology of MIB, the Malay people would remain satisfied and unlikely to call for a change to the status quo.

Added on to this is the quality of the Malay people that have an innate respect for authority³³. This is a hallmark of traditional Bruneian society that was effectively harnessed in the propagation of MIB as the national ideology³⁴.

8.3. Islam

The role of a ruler in Islam is considered one heavy with responsibility. The responsibility of leading his followers onto the right

³³ Crane, Cheryl, Gillen, Mark & Dorman, Ted Mc, "Parliamentary Supremacy in Canada, Malaysia, and Singapore" in Johnston, Douglas M & Ferguson, Gerry, *Asia-Pacific Legal Development* (Canada, UBC Press, 1998) at 208–215 and Kessler, Clive, "Archaism and Modernity: Contemporary Malay Political Culture" in Wah, Francis Loh & Kahn, Joel, eds, *Fragmented Vision: Culture and politics in Contemporary Malaysia* (Australia: Asian Studies Association in association with Allen and Unwin, 1992) at 133, 148

³⁴ Black, A, *Ideology and law: the impact of the MIB ideology on law and dispute resolution in the sultanate of Brunei Darussalam*, *Asian Journal of Comparative Law*, Jan, 2008, Vol.3(1)

Islamic path falls squarely on the shoulders of the leader. The role of the follower in Islam is to support and follow the instructions of the leader to the best of their ability³⁵. It is on these basic principles that the link between the Sultan and the people of Brunei rests. Through an emphasis on Islamic teachings the Sultan has ensured that the people of Brunei, a majority of whom are Muslim, place great respect and trust in him because Islamic practice teaches that this is how one should view one's leaders. The link that is then made is that to disobey the Sultan would be to disobey religious teachings. In the words of Braighlin it is "royal absolutism under a divine mandate"³⁶. Islam being constitutionally declared as the official religion of Brunei, the link between obedience to the Sultan and obedience to God is not one that will be severed in the near future and therefore this is a factor that will contribute towards Brunei's continued existence as an absolute monarchy.

8.4. Wealth

The need to entice foreign investment into a country has long been used as a way to get recalcitrant countries to conform to a set of rules as dictated by the world community. Foreign investment is not

³⁵ Mayer, Ann Elizabeth, "Islam and the State" (1991) 12 *Cardozo L. Rev.* 1015

³⁶ Braighlinn, G, *Ideological Innovation under Monarchy: Aspects of Legitimation Activity in Contemporary Brunei* (The Netherlands: VU University Press 1992)

however something that Brunei particularly requires. Brunei's main export and the source of her wealth is oil. Oil is not a commodity that the world community can do without. The wealth derived from oil puts Brunei in the unique position of not requiring foreign investment and therefore largely able to ignore the calls to democratise from the world community. Brunei is perhaps an ideal example of the "rentier effect" which is when rich governments use low tax rates and patronage to dampen democratic pressures³⁷. Brunei in fact takes it one step further by not having tax at all. Brunei is hence likely to be able to sustain being ruled by an absolute monarch for as long as the country's wealth endures.

9. Conclusion

The aim of this final chapter in this thesis was to examine the various reforms to the Brunei Constitution, spearheaded by the Sultan in 2004, that enhanced and entrenched the power of the Sultan in Brunei today. Further this chapter introduced briefly the other factors that are present in Brunei that would contribute to the continuation of the absolute monarchy into the future. The Sultan's involvement in the entrenchment of the absolute monarchy taken in tandem with the other factors existing in Brunei that contribute to the status quo lead

³⁷ Michael L. Ross (2001) Does Oil Hinder Democracy?, *World Politics*, 53 pp 325-361

the reader to the understanding that Brunei's exceptionalism in not democratising is likely to continue into the foreseeable future.

Conclusions

The key objective of this thesis was to try and explain the reasons for Brunei's exceptionalism in being able to withstand global waves of democratisation to the present day and to question if these factors would ensure the continued existence of the Bruneian absolute monarchy.

To understand Brunei's present day situation, it was obvious that we would need to look at the route Brunei took to get there. A contextual approach was chosen to analyse Brunei's past, because, despite sharing a "colonial master" and a similar cultural, traditional and social background with some of her neighbouring states, Brunei developed very differently. The reason for Brunei's exceptionalism therefore had to lie in what distinguished her from her neighbours thereby necessitating a study into Brunei's constitutional history that took into account various other factors such as the traditions and social norms in Brunei.

This research into Brunei's constitutional history was faced with a number of limitations. The first of which was the restriction of access to Brunei's archived records. An aspect of the state ideology of MIB is that critical review of the Sultan and his government is not encouraged, therefore access to Brunei's primary sources is

restricted as it is deemed unsuitable for the public. This limits the scope of scholarly research because the position of the Brunei Government on anything has to be based on conjecture. This ties in with the second limitation, which is that there is precious little scholarly work on Brunei, and in particular none that relate to constitutional theory. The third limitation faced by this research was that a contextual analysis necessarily makes this research interdisciplinary, touching on other areas of expertise such as history, sociology and politics. The difficulty was trying to balance embracing all aspects of the interdisciplinary work, while at the same time ensuring underpinnings of constitutional law.

Despite these limitations however, we started our examination of Brunei's constitutional by the infancy of the building of the monarchy in Chapter One. We examined how the shortcomings of the quasi-feudal system that was in operation in Brunei necessitated a restructuring of the system by the British on their arrival. We observed that the Sultan, prior to the coming of the British, had very little authority over his land and subjects. We followed the growth of the position of the Sultan in Chapter Two where the many changes to Bruneian governance brought by the British, via the British Resident, included the consolidation of untrammelled power in the Office of the Resident and the bolstering of the Sultan's veneer of authority by operation of the Residential system. The building of the absolute

monarchy was completed in Chapter Three when the power to be internally self governing was taken back by Brunei and the large portfolio of power initially belonging to the British Resident, was transferred to the Sultan.

Chapter Four narrated the events leading up to the rebellion of 1962, when Brunei entered into a state of emergency, and the Sultan began to entrench his powers through constitutional means. The final chapter in this thesis saw the enshrinement of the Brunei Monarchy through the medium of constitutional reform and the use of nation building ideology in the form of Malay Islamic Monarchy or MIB.

This contextual analysis of Brunei's constitutional history led to the conclusion that the continued existence of the absolute monarchy in Brunei was a two step process; the first step was the building of the absolute monarchy through the consolidation of executive, legislative and judicial power in one office by the British and the second step was the exploitation of constitutional provisions by the Sultan to ensure the continuation of his power.

While democratic ideals blossomed in other South East Asian nations, these same ideals did not even take root in Brunei. Despite the best efforts of the British Government to leave behind at the very least a nascent form of a representative government, all the British

actually succeeded in doing in Brunei was leaving the foundations behind that would allow the building and subsequent entrenchment of the Bruneian absolute monarchy. It would be naïve to attribute Brunei's resistance to democratisation entirely to history and a politically savvy monarch. This research has shown that Brunei's exceptionalism must also be attributed to a fortuitous culmination of other factors that cannot be ignored, used skillfully by the Sultan to lend legitimacy to his rule and enshrine his position in the country. This research however has only scratched the surface of these contributory factors such as Malay traditional culture, wealth, religion and race.

Making a projection as to Brunei's future, are these factors that have allowed the enshrinement of the absolute monarchy in Brunei thus far, strong enough to ensure the continuation of the absolute monarchy? The logical answer would be, should all factors remain the same, that the status quo should continue. This projection is however dependent on circumstances both internally and externally remaining the same. While the Sultan has the ability to control internal factors, external factors are completely beyond his power.

Due to the naturally conservative nature of Brunei, she has generally managed to remain under the world's radar. This is perhaps one of the reasons that the world community has not reacted thus far to

Brunei's rule by absolute monarch. Recently however, the increasingly conservative Islamic path that the Sultan and the ideology of MIB have put Brunei on has caught the attention of the world community. The Syariah Penal Code that is supposed to be implemented in stages in Brunei has met with much global criticism. Should Brunei continue on this path, how much longer will the world community choose to remain silent and what if any will the response of the world community be? Furthermore, with the price of oil on the decline, and Brunei being about 90% dependent on her oil income, will Brunei be able to afford to ignore the world community as she has done thus far? Are factors that have enshrined the absolute monarchy in Brunei thus far, strong enough to continue to resist a possibly increasingly hostile outside world?

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